

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

*Plaintiff,*

*v.*

DEPARTMENT OF HOMELAND  
SECURITY, U.S. CUSTOMS AND BORDER  
PROTECTION, U.S. IMMIGRATION AND  
CUSTOMS ENFORCEMENT, U.S.  
CITIZENSHIP AND IMMIGRATION  
SERVICES, DEPARTMENT OF HEALTH  
AND HUMAN SERVICES, OFFICE OF  
REFUGEE RESETTLEMENT,

*Defendants.*

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Civil Action No. \_\_\_\_\_

**Complaint for Injunctive  
and Declaratory Relief**

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

**INTRODUCTION**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, seeking the immediate release of agency records requested by Plaintiff from U.S. Customs and Border Protection (“CBP”), U.S. Immigration and Customs Enforcement (“ICE”), and U.S. Citizenship and Immigration Services (“USCIS”)—all components of the Department of Homeland Security (“DHS”); and the Office of Refugee Resettlement (“ORR”), a component of the Department of Health and Human Services (“HHS”).

2. Plaintiff has submitted FOIA requests to each defendant component requesting the release of all records related to the Juvenile Referral Program (“JRP”).<sup>1</sup> CBP instituted the JRP in certain Border Patrol sectors in 2014 to punish unaccompanied Mexican children who, U.S. law enforcement officials alleged, guided other migrants over the border.<sup>2</sup> Children placed into the JRP are held in high-security detention centers—often juvenile jails—for periods as long as one year.

3. On any given day, the U.S. government detains approximately 200 children under the JRP. The government has acknowledged the existence of the JRP but has refused to explain the procedures and authorities under which the program operates, and has made conflicting statements regarding the program’s future, simultaneously suggesting that it will be expanded to all Border Patrol sectors nationwide, and that it will be discontinued entirely.

4. Plaintiff submitted its FOIA request to CBP almost one year ago. *See* Ex. A. CBP’s untimely response, which only came after extensive follow-up by Plaintiff—including numerous calls and emails and a letter—indicated that the agency had only eight pages of records that discussed or mentioned the JRP in any way, and provided Plaintiff only heavily-redacted versions of these records. *See* Ex. B. Along with the redacted records, CBP sent Plaintiff copies of a 47-page statute enacted in 2008 and a 56-page U.S. Supreme Court decision from 1993. Plaintiff administratively appealed the adequacy of CBP’s search and its withholding of the redacted portions of the identified records. *See* Ex. C.

5. After filing the administrative appeal, Plaintiff followed up with CBP’s FOIA Appeals, Policy & Litigation Branch to find out if additional records would be released. However, no

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<sup>1</sup> CBP has also used the name “Juvenile Referral Process” for this program.

<sup>2</sup> The Women’s Refugee Commission was a co-requester on each of the FOIA requests.

records have been produced and it is Plaintiff's understanding that no release is imminently forthcoming.

6. Because ICE, ORR, and USCIS are involved in the implementation of the JRP and/or maintain records relating to the program, Plaintiff submitted similar FOIA requests to these agencies. Plaintiff sought expedited processing on the basis of the urgent need to inform the public about the JRP, a program that has caused the incarceration of hundreds of children and is still ongoing.

7. ICE denied Plaintiff's request for expedited processing.

8. ORR and USCIS have not responded to Plaintiff's request for expedited processing.

9. ICE, ORR, and USCIS have all failed to release any records in response to Plaintiff's requests.

10. Each defendant agency and component has violated the FOIA.

11. CBP has violated the FOIA by conducting an inadequate search for requested records, improperly withholding responsive records (in whole and in part), and failing to respond to Plaintiff's request for records within the period mandated by the FOIA.

12. ICE, ORR, and USCIS have violated the FOIA by refusing to process Plaintiff's request expeditiously and by failing to respond to Plaintiff's request for records within the period mandated by the FOIA.

13. Plaintiff now asks this Court to order Defendants to release any additional responsive records that Defendants have located, release unredacted versions of the records that have previously been produced in redacted form, and locate and release all remaining records responsive to the requests. Plaintiff also requests that the Court enjoin Defendants from charging Plaintiff fees for processing the requests.

### **JURISDICTION AND VENUE**

14. This Court has both subject matter jurisdiction of the FOIA claim and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), (a)(6)(E)(iii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701–706.

15. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

### **PARTIES**

16. Plaintiff American Civil Liberties Union Foundation is a 26 U.S.C. § 501(c)(3) organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties. It is an arm of the American Civil Liberties Union, which is a nationwide, non-profit, nonpartisan organization that is committed to ensuring that the American government acts in compliance with the Constitution and laws, including its international legal obligations. The ACLU and the ACLU Foundation are committed to principles of transparency and accountability in government, and seek to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and civil rights. They disseminate this information to more than 500,000 members, affiliates nationwide, and the public at large through newsletters, right-to-know handbooks and other publications, trainings, Twitter, Facebook, media interviews, and their website, which regularly features information obtained through the FOIA.

17. Defendant DHS is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

18. Defendant CBP is a component of DHS which (among other things) conducts operations on and near the international land borders of the United States.

19. Defendant ICE is a component of DHS which (among other things) prosecutes removal cases in immigration court.

20. Defendant USCIS is a component of DHS, which (among other things) maintains immigration files (“A-files”) reflecting individuals’ interactions with immigration authorities and adjudicates applications for immigration benefits and services.

21. Defendant HHS is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

22. Defendant ORR is a component of HHS which provides care of and placement for unaccompanied immigrant children who DHS prosecutes in immigration court.

### **FACTS**

#### **The JRP**

23. In or about May 2014, CBP created the JRP in order to punish unaccompanied Mexican children who, U.S. law enforcement officials allege, have guided other migrants over the border. Pursuant to the JRP, which was initially instituted in certain Border Patrol sectors in Texas, the United States detains such children for months at a time, many in high-security jails and other detention centers. The limited and redacted records provided by CBP in response to Plaintiff’s FOIA request describe the JRP as a “strict enforcement policy with regard to juvenile involvement in smuggling crimes” that seeks to “maximize consequence delivery” to these children. CBP agents are directed to “ensure that the juvenile fully understands that he/she has committed a crime.”

24. CBP has neither the facilities nor the authority to detain children for more than a very brief period. Instead, ORR is responsible for caring for and placing children in longer-term custody arrangements, including long-term detention.

25. When a child in the JRP is transferred to ORR, CBP files a written request that the child be held in a “secure” or “staff-secure” facility rather than released to a sponsor or placed in a less restrictive facility.

26. On information and belief, CBP and/or ICE frequently take additional steps to ensure that ORR detains JRP children in secure or staff-secure facilities, rather than placing them in less restrictive settings.

27. There are no publicly available records that describe the JRP in any detail. The government has not explained how CBP decides to place a child in the JRP, how to contest such a determination, the authorities under which the JRP purports to operate, or what information or safeguards are provided to children who are subject to the program.

28. Portions of the CBP records that might provide such information have been redacted by CBP. Advocates, including Plaintiff, have instead attempted to piece together a picture of the program based on other sources, including interviews with children, discussions among advocates who frequently visit detention centers, and occasional and limited remarks from government officials. Unsurprisingly, this picture is hazy and, particularly given the stakes, inadequate to inform the public about the JRP.

29. Children in the JRP usually remain in detention for long and unwarranted periods of time, even up to a year, before they are deported. Advocates have reported that CBP and other federal officers have entered juvenile detention facilities and interrogated the children in the JRP regardless of whether the children have lawyers and even though providing information to federal officers may put these children’s lives at risk in their home countries.

30. In the approximately 17 months since its inception, over 600 Mexican children have been held in detention pursuant to the JRP.

31. CBP is currently undertaking a review of its screening process for all unaccompanied minors.

32. At least one CBP official has stated that, while the JRP is currently being implemented on a pilot basis in certain Border Patrol sectors, it will eventually be incorporated into the new screening process and be in effect nationwide. However, at least one other CBP official has stated that the JRP is being discontinued.

33. Because Defendants have refused to provide information about when, how, and on what bases a child is referred to the JRP, how the JRP operates, or even whether the program is going to continue, the public's ability to provide meaningful input on the screening process revision is substantially impaired. Moreover, lawyers who represent children in the JRP or who are at risk of being placed in the JRP are denied information that is necessary to fully represent their clients.

#### **CBP FOIA Request**

34. On November 25, 2014, Plaintiff submitted a request ("CBP Request") for records related to the JRP.

35. The CBP Request seeks JRP-related records including policy memoranda, communications, agency analyses, and redacted case files of children who have been detained pursuant to the JRP.

36. Plaintiff called the CBP FOIA Office at least seven times to follow up on this request, to no avail. Multiple calls to the CBP FOIA Office telephone line for non-urgent matters were not picked up, and the voicemail box associated with the line was frequently full when Plaintiff called. Plaintiff left two voicemail messages in the personal CBP voicemail box of the CBP FOIA Officer/Public Liaison, and at least two messages in the voicemail box for "urgent"

matters. In addition, Plaintiff sent a letter to the CBP FOIA Officer/Public Liaison by overnight mail and by email.

37. CBP did not respond to these inquiries.

38. On July 7, 2015, Plaintiff emailed the chief of the CBP FOIA Appeals, Policy & Litigation Branch seeking suggestions for how to get information about the status of the CBP Request. That official offered to send Plaintiff's inquiry to another supervisor in the CBP FOIA Office.

39. No one from CBP contacted Plaintiff.

40. After additional follow-up, a CBP official finally responded to one of Plaintiff's emails, indicating that CBP would release records to Plaintiff by July 17, 2015.

41. CBP did not release any records by July 17, 2015.

42. After Plaintiff again followed up with CBP, CBP finally sent a FOIA response on July 22, 2015. In that response, CBP stated that "[a] search of CBP databases produced a total of 113 pages of records responsive to your request. CBP has determined that 113 pages of the records are partially releasable, pursuant to Title 5 U.S.C. §552(b)(2), (b)(6) and (b)(7)(C)."

43. The 113-page release was comprised of the following documents:

- a. A heavily-redacted copy of South Texas Campaign Juvenile Referrals Standard Operating Procedures ("SOP");
- b. An unsigned document that contains a description of the JRP and talking points on the JRP ("JRP Write-Up");
- c. A memorandum dated May 8, 2014 with the subject line "Juvenile Referral Standard Operating Procedure" ("JRP Memo");



d. A copy of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457; and

e. A copy of the Supreme Court's opinion in *Reno v. Flores*, 507 U.S. 292 (1993).

44. Only eight pages of the 113-page CBP response—the SOP, the JRP Write-Up, and the JRP Memo—discuss or mention the JRP. Three and a half of those pages are almost entirely redacted. CBP cited FOIA Exemptions 2, 6, and 7 in making the redactions. *See* Ex. B.

### **CBP FOIA Appeal**

45. On July 30, 2015, Plaintiff filed a letter of appeal, challenging the adequacy of CBP's search for records responsive to the request and the redactions made by CBP. *See* Ex. C.

46. In its appeal letter, Plaintiff provided detailed information demonstrating that numerous responsive records are known through other sources to exist, but were neither produced nor logged as withheld in response to the request. Plaintiff noted that, for example, CBP had not produced a publicly-available CBP performance report that briefly discussed the JRP, and that although CBP officials had orally provided statistics from an agency analysis when they made assertions about the children in the JRP, the agency had failed to identify the analytical, investigative, statistical, transactional, or other records that were the basis for such assertions.

47. Plaintiff also explained that, although the few records provided in the FOIA response themselves indicate that there has been intra-agency communication regarding individual JRP cases, “ongoing local coordination efforts between the U.S. Border Patrol and Mexican Consulates,” provision of “information concerning the JRP to the Mexican Embassy in Washington, D.C.,” and attempts “to pursue Federal, State or local prosecution,” CBP claimed not to have found any of these records in its search.

48. The JRP Write-Up also indicates that CBP is considering expansion of the JRP, but the FOIA response does not include any related discussions, correspondence, or other records.

49. In addition, although Plaintiff requested “[a]ll case files, forms (including Forms 93), or other records in CBP’s possession that relate to children that are included within the JRP or have been considered for inclusion within the JRP,” CBP did not provide any case files. At a minimum, records that relate to children who have been or are referred to the JRP include:

- f. CBP Form 93;
- g. Form I-213;
- h. Form I-770;
- i. Entries in the e3 Detention Module and the Secure Integrated Government Mainframe Access module;
- j. “UAC placement form” (or other written recommendation for placement of juveniles in the JRP);
- k. Email referrals between CBP and ORR to refer and place each juvenile and related manual data entries;
- l. Records of any attempt to refer the juvenile to the Anti-Trafficking in Persons Program or the Office on Trafficking in Persons; and
- m. Records of any attempt to refer the juvenile to the Homeland Security Investigations unit or any other law enforcement entity.

50. In its appeal letter, Plaintiff also informed CBP that it had failed to provide records described by Robert Harris, then the commander of CBP’s South Texas Campaign, in a telephonic briefing on or about January 13, 2015. During the call, Harris discussed: a purportedly rigorous analysis of JRP data that he commissioned to, as he explained it, determine

who is at the top of criminal enterprises in South Texas; a 180-day analysis to determine which aspects of the JRP are working and which aspects are not working; and a series of questions that had been developed to ask potential candidates for the JRP about their involvement with cartels. The two analyses and the questioning protocol that Harris mentioned are plainly responsive to the FOIA request. So too are the underlying records that were consulted to create the analyses, and the records related to the development of the questioning protocol.

51. Plaintiff's appeal letter also pointed out that CBP had unjustifiably redacted the few records referencing the JRP that CBP did provide. Specifically, Plaintiff explained that CBP's blanket redaction of the "Procedures" section of the SOP was not covered by Exemption 2, as CBP claimed, because Exemption 2 only encompasses "employee relations or human resource matters," and does not exempt "internal rules and practices," *Milner v. Department of the Navy*, 562 U.S. 562, 577–81 (2011). In addition, Plaintiff explained that CBP's invocation of Exemptions 6 and 7 in redacting portions of the SOP was erroneous because the SOP has nothing to do with an individual's personal information or any other information that could be construed as an invasion of privacy. Even if the SOP did contain such information, CBP provided no basis at all for withholding that information, much less a reason that would outweigh the public's need to know about the JRP.

52. After filing the administrative appeal, Plaintiff began following up with CBP's FOIA Appeals, Policy & Litigation Branch to find out if additional records would be released.

53. Despite Plaintiff's efforts, no records have been produced and CBP has not formally responded to Plaintiff's appeal.

54. Plaintiff's understanding is that no release is imminently forthcoming.

### **ICE FOIA Request**

55. On September 10, 2015, Plaintiff submitted a FOIA request to ICE seeking records related to the JRP. *See* Ex. D. The request is substantially similar to the request submitted to the other Defendants. Together with the request, Plaintiff sought expedited processing.

56. On September 16, 2014, ICE denied Plaintiff's request for expedited processing. *See* Ex. E. It erroneously concluded that Plaintiff had not established an "urgency to inform the public" about the JRP and that Plaintiff is not an organization primarily engaged in disseminating information.

57. Even without expediting the request, ICE was statutorily required to respond to Plaintiff's FOIA request by October 8, 2015 (or, if it could show "unusual circumstances," 5 U.S.C. § 552(a)(6)(B), by October 22, 2015), but it failed to do so.

58. On October 27, 2015, Plaintiff appealed ICE's denial of expedited processing, setting forth at length the erroneous legal conclusions and unfounded factual assertions in ICE's initial denial letter. *See* Ex. F.

59. ICE was statutorily required to respond to Plaintiff's appeal of its expedited processing decision "expeditiously," but it has not responded, nor provided any documents in response to Plaintiff's request.

### **ORR FOIA Request**

60. On September 10, 2015, Plaintiff submitted a FOIA request to ORR seeking records related to the JRP. *See* Ex. G. The request is substantially similar to the request submitted to the other Defendants. Together with the request, Plaintiff sought expedited processing.

61. ORR was statutorily required to respond to Plaintiff's request for expedited processing by September 21, 2015, but it never responded.

62. Even without expediting the request, ORR was statutorily required to respond to Plaintiff's FOIA request by October 8, 2015, but it has not responded, nor provided any documents in response to Plaintiff's request.

#### **USCIS FOIA Request**

63. On September 10, 2015, Plaintiff submitted a FOIA request to USCIS seeking records related to the JRP. *See* Ex. H. The request is substantially similar to the request submitted to the other Defendants. Together with the request, Plaintiff sought expedited processing.

64. USCIS was statutorily required to respond to Plaintiff's request for expedited processing by September 21, 2015, but it never responded.

65. Even without expediting the request, USCIS was statutorily required to respond to Plaintiff's FOIA request by October 8, 2015, but it has not responded, nor provided any documents in response to Plaintiff's request.

#### **CAUSES OF ACTION**

##### **First Claim (CBP)**

66. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

67. Defendant CBP failed to make a reasonable effort to search for records sought by Plaintiff's request and thereby violated the FOIA, 5 U.S.C. § 552(a)(3), and the corresponding regulations.

68. To the extent that CBP has located responsive records, but failed to produce or provide a valid reason for withholding them, that failure also violates the FOIA, 5 U.S.C. § 552(a)(3), and the corresponding regulations, 6 C.F.R. §§ 5.1, 5.6(c).

**Second Claim (CBP)**

69. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

70. CBP improperly relied on exemptions under 5 U.S.C. § 552(b)(2), (b)(6), and (b)(7) in redacting responsive records. CBP's improper redaction of responsive records violates the FOIA, 5 U.S.C. § 552(b).

**Third Claim (ICE, ORR, and USCIS)**

71. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

72. Defendants ICE, ORR, and USCIS failed to provide records sought by the requests within the statutory time limits, 5 U.S.C. § 552(a)(6)(A), and thereby violated the FOIA, as well as the corresponding regulations, 6 C.F.R. § 5.6; 45 C.F.R. § 5.35.

**Fourth Claim (ICE, ORR, and USCIS)**

73. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

74. Defendant ICE violated the FOIA by failing to grant Plaintiff's request for expedited processing. ICE erroneously denied Plaintiff's request for expedited processing by misapplying the legal standard set forth at 5 U.S.C. § 552(a)(6)(E)(v) and 6 C.F.R. § 5.5(d) and making erroneous factual determinations.

75. ORR and USCIS effectively denied Plaintiff's request for expedited processing by failing to respond at all and thereby violated the requirement that the agency respond to such requests within ten days, 5 U.S.C. § 552(a)(6)(E)(ii)–(iii); 6 C.F.R. § 5.5(d).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that Defendants' refusal to disclose the records requested by Plaintiff is unlawful;
2. Order Defendants to make a full, adequate, and expeditious search for the requested records;
3. Enjoin Defendants from withholding the requested records and order Defendants to make the requested records available within five days;
4. Award Plaintiff costs and reasonable attorneys' fees under 5 U.S.C. § 552(a)(4)(E), the Equal Access to Justice Act, and any other applicable statute or regulation; and
5. Grant such further relief as the Court deems just, equitable, and appropriate.



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Dated: November 17, 2015

# **EXHIBIT A**



LEGAL DEPARTMENT  
IMMIGRANTS'  
RIGHTS PROJECT



November 25, 2014

VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Sabrina Burroughs  
FOIA Officer  
U.S. Customs and Border Protection  
90 K Street NE, 9th Floor  
Washington, D.C. 20229-1181

CBPFOIA@cbp.dhs.gov

Re: Freedom of Information Act (FOIA) Request  
Juvenile Referral Program

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
IMMIGRANTS'  
RIGHTS PROJECT

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OFFICERS AND DIRECTORS  
SUSAN N. HERMAN  
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ROBERT REMAR  
TREASURER

Dear Ms. Burroughs:

The American Civil Liberties Union Foundation ("ACLU") and Women's Refugee Commission ("WRC") ("Requestors") submit this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq. We ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E), and that we be granted a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

**Request for Information**

The Requestors request disclosure of the following records<sup>1</sup> that were prepared, received, transmitted, collected and/or maintained by U.S. Customs and Border Protection ("CBP"), including but not limited to records prepared, received, transmitted, collected and/or maintained at CBP Headquarters and at Border Patrol Sector Headquarters, Stations, and Substations:

<sup>1</sup> The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to training manuals, correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

All records relating to the Juvenile Referral Program (“JRP”).

By “Juvenile Referral Program” we mean:

- Any program or policy referred to by CBP or any of its components as the “Juvenile Referral Program” or the “Mexican Juvenile Referral Program”;
- Any program or policy implemented in 2014 relating to children<sup>2</sup> suspected of being “foot guides,” “river guides,” “smuggling guides,” or “circuit children” or otherwise suspected of being involved in assisting others to cross the U.S.-Mexico border; and
- Any program or policy involving the referral or potential referral of children for prosecution by federal, state, or local authorities.

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This request includes, but is not limited to:

- All policies, regulations, practices, procedures, recommendations and guidelines implementing or referring to the JRP;
- All communications discussing the JRP as a whole or in part or individual cases or incidents within the JRP; and
- All case files, forms (including Forms 93), or other records in CBP’s possession that relate to children that are included within the JRP or have been considered for inclusion within the JRP. Our understanding is that this category of records will include case files relating to most or all of the A-numbers listed in Exhibit A, as well as additional case files. (We do not seek these children’s names or other personally identifying information, and you may redact such information from the records provided to us.)

### **Request for Expedited Processing**

Expedited processing is warranted because there is “an urgency to inform the public about an actual or alleged federal government activity” and the request is made by entities “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

First-hand reports from children and their attorneys, along with statements of

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<sup>2</sup> The term “children” as used herein includes all individuals under 18 years old.

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federal officials, suggest that under the JRP, the federal government is systematically subjecting hundreds of children to confinement for months at a time to punish them for suspected criminal activity, without trial. Reports further suggest that the government interrogates these children about suspected criminal activity without providing them with counsel and without protective measures commensurate with their vulnerable status. There is an “urgency to inform the public about [this] actual or alleged governmental activity” because (1) exposure of this practice to public scrutiny could cause it to stop, sparing children from additional confinement and interrogation; and (2) the government should not be able to shield an ongoing violation of children’s fundamental due process rights from public view.

Furthermore, there is intense public interest in issues relating to unaccompanied children and trafficking. A search for articles published in the last year that referred to unaccompanied children and the border in Westlaw’s news database resulted in over 5,300 hits. A search for articles published in the last year that referred to unaccompanied children and trafficking or smuggling resulted in over 4,000 hits.

Despite this widespread interest, little or no information about the JRP is available in the public domain. Searches of CBP’s website have not revealed any information about the JRP, and we have been able to locate only one short article, published in Spanish, that references the program.<sup>3</sup> This informational void on a topic of intense public interest further demonstrates the urgency of this request.

The Requestors are “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(d)(3). The WRC is an expert resource and advocacy organization that monitors the care and protection of refugee women and children. It disseminates information about these issues to governments, policy makers, and the general public. The WRC’s Migrant Rights and Justice Program conducts extensive research and regularly publishes reports on detained immigrant children in U.S. federal custody, including the seminal publications *Halfway Home* and *Forced from Home*. The WRC publishes a newsletter distributed via email, maintains a blog, releases information via social media platforms, and regularly shares its findings through print and televised media platforms, as well as its website, [www.womensrefugeecommission.org](http://www.womensrefugeecommission.org).

For its part, the ACLU publishes newsletters, provides news briefings, and publishes and disseminates reports on civil liberties issues, right-to-know documents, and other materials to the public through its communications

<sup>3</sup> [www.reforma.com/aplicaciones/articulo/default.aspx?id=348413](http://www.reforma.com/aplicaciones/articulo/default.aspx?id=348413).

department, its 53 state-based affiliates, and its public website, [www.aclu.org](http://www.aclu.org). Among other civil liberties and civil rights issues, the ACLU's website addresses immigrants' rights issues in depth (at [www.aclu.org/immigrants](http://www.aclu.org/immigrants)), provides features on immigrants' rights issues in the news, and contains hundreds of primary source documents created or obtained by ACLU staff. The website, which received over 13.9 million visits in 2013, specifically features information obtained through FOIA requests. The ACLU also publishes an electronic newsletter distributed via email; airs regular podcasts; maintains a blog; releases information via social media platforms; and has produced a television series on civil liberties issues.<sup>4</sup>

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Upon receipt of the records requested, the Requestors will review them carefully and will disseminate newsworthy information through the channels available to them.

### **Request for Waiver of Fees**

The requestors ask that all fees associated with this FOIA request be waived. We are entitled to a waiver of all costs because disclosure of the information is "...likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, the Requestors have the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003).

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities. The records requested relate directly to governmental operations or activities; all are directly traceable to a specific federal government program, the JRP. Release of these records will contribute significantly to public understanding of the JRP, and more broadly to the processing of unaccompanied children at the border and

<sup>4</sup> The ACLU and WRC are also "representative[s] of the news media" within the meaning of the statute and applicable regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (defining a representative of the news media as an entity that "gathers information of potential interest to a segment of the public" and "uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience"); *see also Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1397 (D.C. Cir. 1989) (same); 6 C.F.R. § 5.11(b)(6) (defining representative of the news media as "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public").

governmental treatment of children suspected of being involved in smuggling activity. As noted above, although these are areas of intense public concern, there is virtually no information about the JRP available to the public. Thus, the requested information would significantly enhance the public's understanding of the JRP and the broader topics it relates to.

Disclosure is not within the commercial interest of the Requestors. The ACLU and WRC are not-for-profit organizations that do not seek to disseminate the information for the purpose of commercial gain. Moreover, "a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use." 6 C.F.R. § 5.11(b)(6). As explained above, this request falls within § 5.11(b)(6) because it supports both Requestors' dissemination of information relating to a topic of current interest to the public. In this respect, the request strongly resembles the many previous instances in which the government waived all fees associated with responding to FOIA requests by the ACLU.<sup>5</sup>

In any event, the Requestors are "representative[s] of the news media" and do not seek the records requested for commercial use. Accordingly, even if any fees could be charged relating to the processing of the request, they would be "limited to reasonable standard charges for document duplication" alone. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

\* \* \*

We certify that the information in this request is true to the best of our knowledge and belief.

If this request is denied in whole or in part, we ask that the government justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect the government to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information

<sup>5</sup> The following are recent examples of requests in which agencies did not charge the ACLU fees associated with responding to its FOIA requests: (1) a FOIA request submitted to the Department of State in April 2005; (2) a FOIA request submitted to the National Institute of Standards and Technology in April 2005; (3) a FOIA request submitted to the Office of Science and Technology in the Executive Office of the President in August 2003; (4) a FOIA request submitted to the Federal Bureau of Investigation in August 2002; (5) a FOIA request submitted to the Office of Intelligence Policy and Review in August 2002; (6) a FOIA request submitted to the Office of Information and Privacy in the Department of Justice in August 2002.

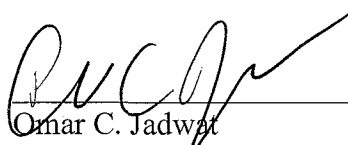
or to deny expedited processing or a waiver of fees.

We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding our request for expedited processing, we alternatively look forward to your reply to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

Please direct any correspondence and provide any records to Omar C. Jadwat, either by email to [ojadwat@aclu.org](mailto:ojadwat@aclu.org) or at the address below. Thank you for your prompt attention to this request.

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

Sincerely,



Omar C. Jadwat  
ACLU Immigrants' Rights Project  
125 Broad Street, 18th Floor  
New York, NY 10004



Jennifer Podkul  
Migrant Rights and Justice Program  
Women's Refugee Commission  
1730 M St, NW  
Washington, D.C. 20036

EXHIBIT A  
*List of A-Numbers*

A 202-000-415	A 206-795-502
A 202-001-394	A 206-796-342
A 202-030-878	A 206-796-454
A 202-030-948	A 206-797-056
A 205-517-292	A 206-797-057
A 205-517-378	A 206-798-972
A 205-517-463	A 206-799-663
A 205-641-950	A 206-799-990
A 205-642-071	A 206-800-296
A 205-645-799	A 206-800-448
A 205-726-738	A 206-800-630
A 205-732-315	A 206-802-293
A 205-841-497	A 206-802-293
A 205-841-567	A 206-802-407
A 205-841-676	A 206-802-509
A 206-159-844	A 206-802-815
A 206-316-246	A 206-803-003
A 206-360-464	A 206-804-727
A 206-693-644	A 206-805-186
A 206-726-950	A 206-805-197
A 206-727-574	A 206-805-198
A 206-756-278	A 206-805-200
A 206-756-450	A 206-807-259
A 206-756-451	A 206-807-529
A 206-769-689	A 206-807-546
A 206-769-691	A 206-807-554
A 206-769-974	A 206-807-622
A 206-770-122	A 206-807-687
A 206-770-123	A 206-807-744
A 206-770-294	A 206-807-771
A 206-770-294	A 206-807-773
A 206-770-296	A 206-843-157
A 206-771-905	A 206-843-682
A 206-772-155	A 206-843-682
A 206-772-617	A 206-846-866
A 206-772-617	A 206-870-519
A 206-775-149	
A 206-779-155	
A 206-779-401	
A 206-779-995	
A 206-780-173	
A 206-794-795	
A 206-795-501	

# **EXHIBIT B**



July 22, 2015

CBP-2015-007191

Omar C. Jadwat  
ACLU of New York  
125 Broad Street, 18<sup>th</sup> FLR  
New York, NY 10004

Dear Mr. Jadwat:

This is a final response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP), seeking all records related to the Juvenile Referral Program.

A search of CBP databases produced a total of 113 pages of records responsive to your request. CBP has determined that 113 pages of the records are partially releasable, pursuant to Title 5 U.S.C. § 552 (b)(2), (b)(6) and (b)(7)(C).

Enclosed are 113 pages with certain information withheld as described below:

**FOIA Exemption (b)(2)** protects information related solely to the internal personnel rules and practices of an agency.

**FOIA Exemption (b)(6)** exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, driver license, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

**FOIA Exemption (b)(7)(C)** protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional

recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate.

You have a right to appeal our withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 90 K Street, NE, 10<sup>th</sup> Floor, Washington, DC 20229-1177, following the procedures outlined in the DHS regulations at Title 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

This office may be reached at (202) 325-0150. Please notate file number CBP-2015-007191 on any future correspondence to CBP related to this request.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sharon R. Deshield". The signature is written in a cursive, flowing style.

Sharon R. Deshield  
Government Information Specialist  
Privacy and Diversity Office, Freedom of Information Acts Division

Enclosure(s)

207 West Del Mar Boulevard  
Laredo, TX 78041

LRT 150/2

**U.S. Customs and  
Border Protection**

May 8, 2014

MEMORANDUM FOR: See Distribution

FROM:

(b)(6) (b)(7)(C)

South Texas Campaign Commander  
Laredo Sector Chief Patrol Agent

(b)(6) (b)(7)(C)

SUBJECT: Juvenile Referrals Standard Operating Procedure

The South Texas Border Intelligence Center (STXBIC) has identified numerous juvenile smugglers and guides independently responsible for thousands of illegal alien entries, to include special interest alien (SIA) entries. Juveniles are regularly recruited by Transnational Criminal Organizations (TCOs) to engage in smuggling activity because it is difficult to prosecute or effect any consequence on these young offenders. This situation significantly hinders U. S. Customs and Border Protection's (CBP's) ability to impact the cross border smuggling of undocumented aliens and narcotics. It also encourages TCOs to exploit this vulnerability. This is the beginning of these juveniles' involvement into higher ranks of the TCO network. Early positive influence can break this cycle of criminalization of these young offenders.

In an effort to further degrade and disrupt TCO activity throughout the South Texas Corridor, as well as to positively impact exploited juveniles, the attached Juvenile Referrals Standard Operating Procedure (SOP) institutes guidance for utilizing established prosecutorial and administrative removal guidelines to remove juvenile guides and smugglers. As part of that guidance, and as established in the Homeland Security Act, juvenile smugglers and guides who are declined prosecution will immediately be referred to the Office of Refugee Resettlement (ORR). This process further enables CBP to protect the welfare of juveniles, removing them from a dangerous and criminal atmosphere and into a positive and secure environment.

Please direct questions to Division Chief (b)(6) (b)(7)(C) or email to (b)(6) (b)(7)(C). Thank you in advance for your continued support.

Attachment

Distribution: Chief Patrol Agent, Laredo Sector, Office of Border Patrol  
Chief Patrol Agent, Del Rio Sector, Office of Border Patrol  
Chief Patrol Agent, Rio Grande Valley Sector, Office of Border Patrol  
Chief Patrol Agent, New Orleans Sector, Office of Border Patrol  
Director, Laredo Field Office, Office of Field Operations  
Director, Houston Field Office, Office of Field Operations  
Director, Laredo Air Branch, Office of Air and Marine  
Director, Houston Air Branch, Office of Air and Marine

## SOUTH TEXAS CAMPAIGN JUVENILE REFERRALS STANDARD OPERATING PROCEDURES

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### INTRODUCTION

The South Texas Campaign (STC) will implement a corridor-wide strict enforcement policy with regard to juvenile involvement in smuggling crimes.

### PURPOSE

This Standard Operating Procedure (SOP) will maximize consequence delivery through existing guidelines for the prosecution and/or administrative removal of unaccompanied juvenile alien smugglers/guides, ultimately resulting in the disruption and degradation of transnational criminal organizations (TCOs) in the South Texas Corridor.

### INTENT

Following the apprehension of an unaccompanied juvenile smuggler/guide, sectors throughout the South Texas Corridor will make every attempt necessary to pursue Federal, State or local prosecution. Agents will ensure that the juvenile fully understands that he/she has committed a crime. If prosecution is declined, agents must present the unaccompanied juvenile smuggler/guide to the sector juvenile coordinator for referral to the Office of Refugee Resettlement (ORR). This process will happen instead of granting a voluntary departure to the juvenile's country of citizenship.

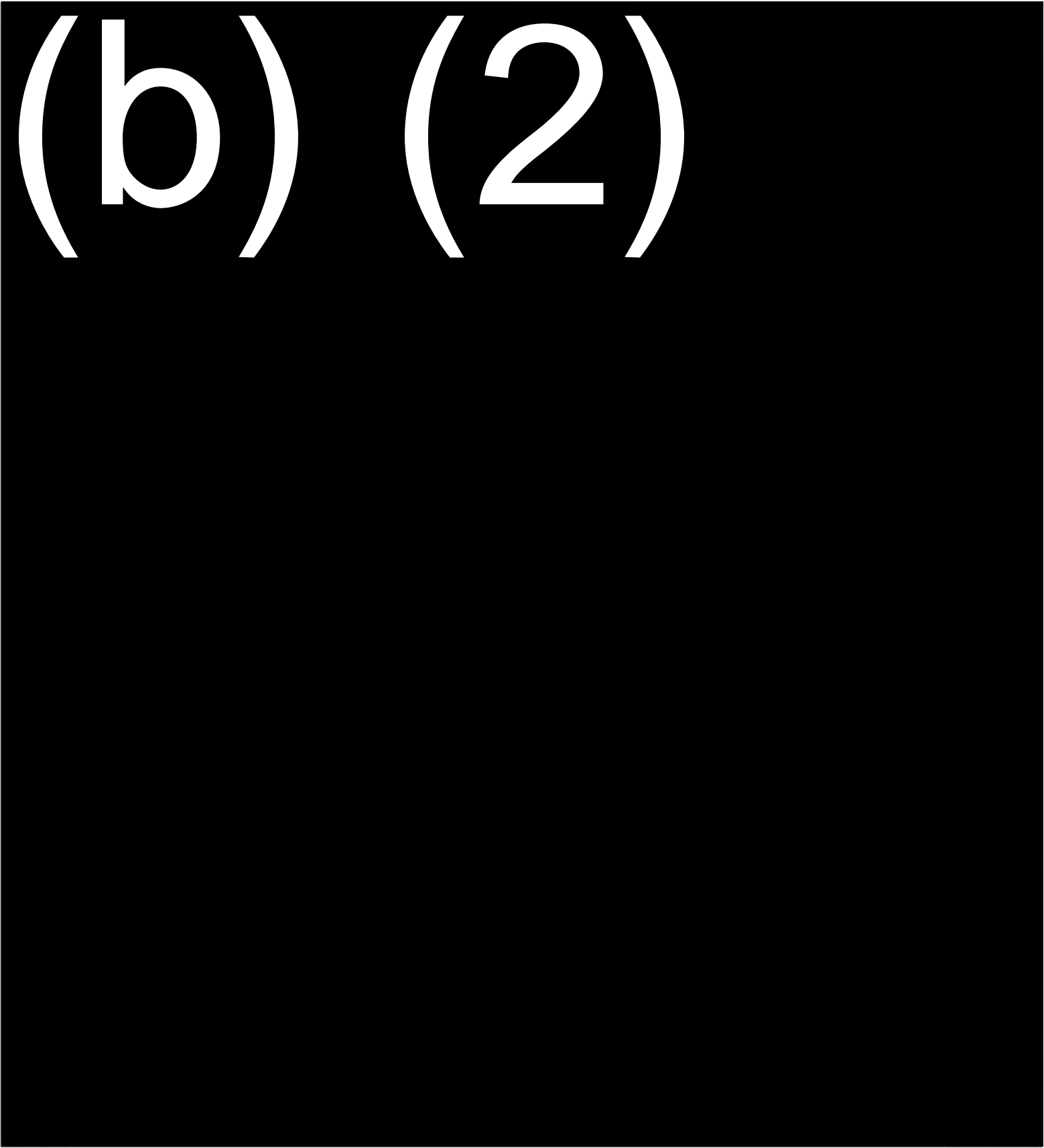
### PROCEDURES

(b) (2)

SOUTH TEXAS CAMPAIGN  
JUVENILE REFERRALS STANDARD OPERATING PROCEDURES

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(b) (2)

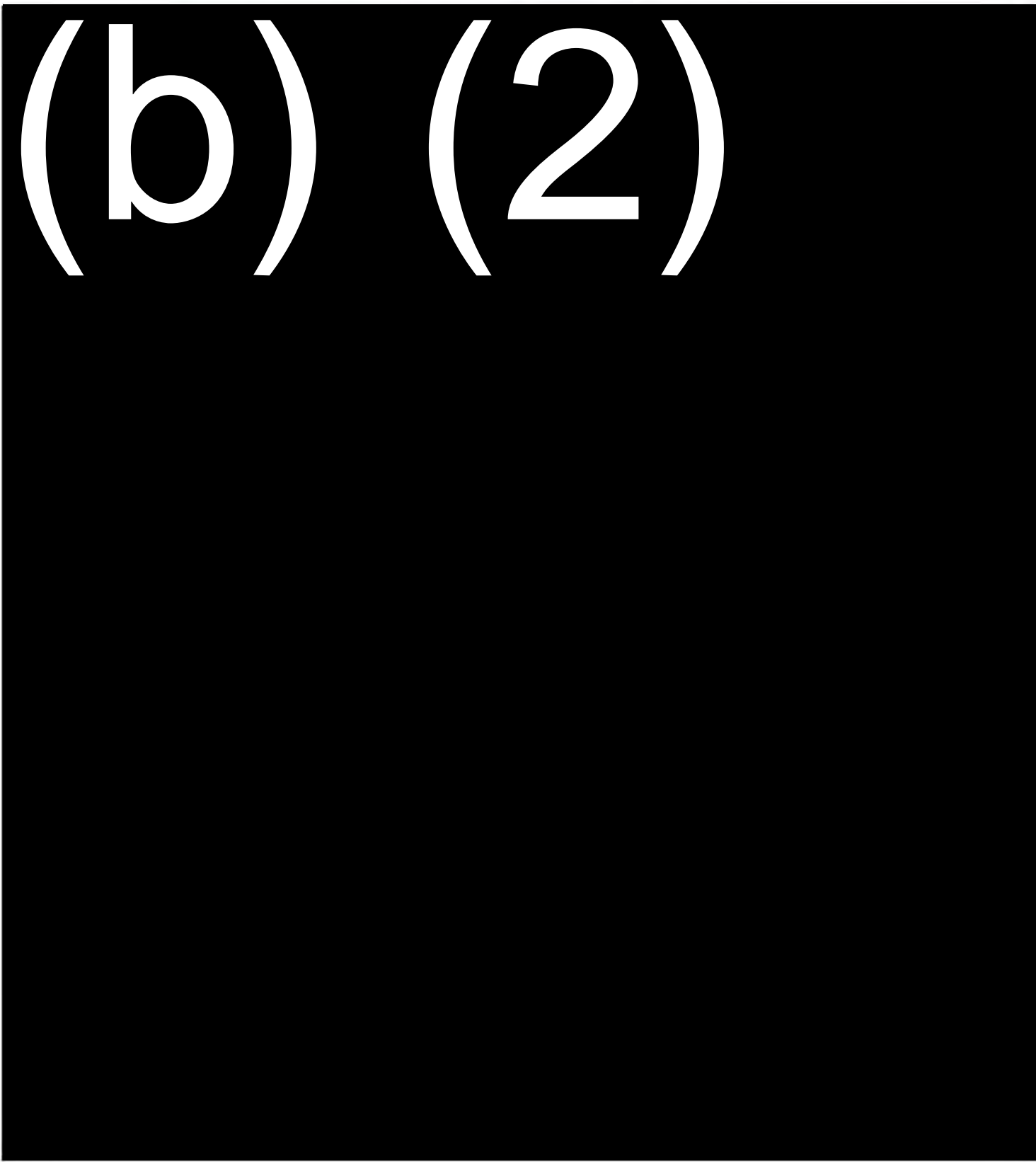




SOUTH TEXAS CAMPAIGN  
JUVENILE REFERRALS STANDARD OPERATING PROCEDURES

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(b) (2)



SOUTH TEXAS CAMPAIGN  
JUVENILE REFERRALS STANDARD OPERATING PROCEDURES

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(b) (2)

**DISCLOSURE**

This document is an internal policy of the STC and will remain in effect until cancelled or superseded.

(b) (7)(C), (b) (6)

## **Juvenile Referral Process**

### **BACKGROUND:**

Under current legal guidelines the Border Patrol has discretion in the application of legal and administrative processes to include the ability to voluntarily return certain juveniles, who are unaccompanied alien children (UACs), to contiguous countries. Historically, there is a limited ability to prosecute juveniles in state, federal, or county courts. The U.S. Border Patrol under the TVPRA has limited processing choices for Mexican UACs suspected of smuggling - Voluntary Return (VR) or Notice to Appear (NTA). This has unintentionally created legal loopholes which are regularly used by transnational criminal organizations (TCOs). These TCOs exploit hundreds of juveniles, using them as smugglers, guides, and scouts; in turn these juveniles are responsible for smuggling thousands of illegal aliens and large amounts of narcotics. The U.S. Government's limited ability to address UACs engaging in illegal activity further encourages the TCOs to use juveniles for their cross-border criminal activity in order to exploit this vulnerability.

The Juvenile Referral Process (JRP, sometimes referred to as the Juvenile Referral Program) was initiated in May 2014 within the South Texas Campaign (encompassing the Border Patrol's Laredo Sector and Del Rio Sector; and Office of Field Operation's Del Rio, Laredo, Roma, Rio Grande City, Hidalgo, Progreso, and Brownsville Ports of Entry) as a way to counter the criminalization and recruitment of juveniles. To clarify, JRP is a process NOT a program.

### **PURPOSE:**

The JRP helps standardize the process for juvenile criminal offenders in order to disrupt the capabilities of the TCO's which exploit juveniles; remove the juvenile offender from the criminal cycle; and deter the continued recruitment of juveniles into illicit activity. The process further enables CBP to protect the welfare of the juvenile by placing the juvenile with the Department of Health and Human Service's Office of Refugee Resettlement. The JRP is applicable to UACs with documented or self-admitted criminal activity and is not meant to be applied to UACs apprehended solely due to their immigration status.

### **APPLICATION:**

Upon apprehension of a previously known/identified or self-identified UAC guide/smugglers, the criminal case is completed in compliance with sector policies – to include information on the current incident, criminal history, and any records of previous smuggling events – and are provided to the sector prosecutions office who work closely with the U.S. Attorney office to determine if the case will be accepted for criminal prosecution. If criminal prosecution is declined, the juvenile smuggler/guide is processed administratively for removal.

Upon completion of all required documentation for criminal/administrative action, the Border Patrol sector Juvenile Coordinator will be advised of a JRP referral so that they may initiate the transfer of the juvenile into the care of Health and Human Services, Office of Refugee Resettlement (HHS/ORR).



This is in keeping with normal UAC processes and procedures, which are consistent with the TVPRA in cases where the juveniles may be exploited by TCOs. The juvenile coordinator will inform HHS of the criminal concerns and recommend that they be considered for placement in HHS/ORR secure facilities, so that HHS/ORR does not inadvertently place other UACs who do not present similar risks at risk of exposure to the criminal element or possible influence of TCOs.

All consular notification requirements are adhered to before the transfer of the UACs into the care of HHS/ORR.

## **RESULTS:**

Initial information indicates positive results from the process but due to the relatively short time that the JRP has been in use, there is not enough data to determine the long term impact.

The following data (current as of November 12, 2014) has been provided by the U.S. Border Patrol:

- Total Referrals: 376
- Current Juveniles referred through the JRP<sup>i</sup>: 272
- Accepted for criminal prosecution<sup>ii</sup>: 0
- UACs repatriated after referral to an Immigration Judge<sup>iii</sup> : 94
- UACs apprehended after referral<sup>iv</sup> : 7
- Average time in the United States, including placement with HHS/ORR: 70 -71 days

## **PATH FORWARD:**

In addition to the ongoing local coordination efforts between the U.S. Border Patrol and Mexican Consulates throughout South Texas, DHS and CBP leadership have provided information concerning the JRP to the Mexican Embassy in Washington, D.C., and requested that Mexico work toward providing alternate options for social assistance and/or reformative action in Mexico. This would help ensure these at-risk children – once repatriated back to Mexico – are allowed to continue any positive progress they have made, which could be used as an alternative to criminal and/or administrative processes in the United States. Also, the implementation of programs in Mexico that promote prevention and deterrence of at-risk juveniles from getting involved in criminal activity would reduce the overall number of children referred to JRP.

CBP will continue to monitor the JRP to determine if the same process (or something similar) should be expanded to other areas of the Southwest Border.

## **Talking Points**

- The Juvenile Referral Process, initiated in May 2014, encompasses both the Border Patrol and the Office of Field Operations within the South Texas Campaign.
- The desired end state is to expose affected juvenile to a positive, constructive environment so that they may be able to better themselves outside of the grip of the transnational criminal organizations, stop engaging in criminal activity and thereby free them from the criminal cycle.
- JRP disrupts the capabilities of TCOs that target and exploit juveniles to support their illegal operations including smuggling illegal aliens and narcotics. JRP does not apply to all juveniles apprehended solely due to their immigration status – it is meant for juveniles with documented or self-admitted criminal activity.
- Upon apprehension of a juvenile that qualifies for the JRP, a criminal case is completed according to existing policies and provided to the local prosecution office, who work with the U.S. Attorney office to determine acceptance for criminal prosecution. If the prosecution is declined, the juvenile is processed administratively for removal.
- The process further enables CBP to protect the welfare of juveniles by placing them with the Department of Health and Human Service's Office of Refugee Resettlement (HHS/ORR), where they receive constant supervision, and provided educational and counseling services pending their appearance before an immigration judge.
- While at HHS/ORR, juveniles under the JRP are segregated from other unaccompanied children who do not present similar risks, to remove their risk of exposure to the criminal element or possible influence of TCOs.
- This is a humanitarian effort that requires close coordination with multiple communities of interest, including: CBP, HHS/ORR, ICE-ERO Juvenile Coordinators and Mexican Consular officials.
- Although the JRP is less than six months old, it has already proven to be effective at reducing recidivism. There have been more than 350 referrals since the initiation of the process, with less than two percent of juveniles apprehended after referral.

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<sup>i</sup> This number represents those UAC's referred through the JRP for who CBP has not received a final disposition of their administrative process.

<sup>ii</sup> All suspected smugglers are referred for criminal prosecution regardless of age. To this date no juveniles referred to DOJ have been accepted for prosecution criminally.

<sup>iii</sup> Repatriated after being considered for criminal prosecution by the JRP and then referred to HHS/ORR pending referral to the Immigration Judge.

<sup>iv</sup> being considered for criminal prosecution by the JRP and ordered removed by an immigration judge (recidivist)

# **EXHIBIT C**

LEGAL DEPARTMENT  
IMMIGRANTS'  
RIGHTS PROJECT



July 30, 2015

FOIA Appeals  
Policy and Litigation Branch  
U.S. Customs and Border Protection  
90 K Street, NE, 10th Floor  
Washington, DC 20229-1177

**RE: FOIA Appeal (CBP-2015-007191)**

To Whom It May Concern:

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
IMMIGRANTS'  
RIGHTS PROJECT

PLEASE RESPOND TO:  
CALIFORNIA OFFICE  
39 DRUMM STREET  
SAN FRANCISCO, CA 94111-4805  
T/415.343.0770  
F/415.395.0950

125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2660  
F/212.549.2654  
[WWW.ACLU.ORG](http://WWW.ACLU.ORG)

OFFICERS AND DIRECTORS  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

ROBERT REMAR  
TREASURER

This letter constitutes an appeal of an adverse determination by Customs and Border Protection (“CBP”) regarding the above-referenced FOIA request sent by the American Civil Liberties Union and the Women’s Refugee Commission (collectively, the “Requesters”).

By letter dated November 25, 2014, the Requesters sought records related to the Juvenile Referral Program (also referred to as the Juvenile Referral Process) (“JRP”). Specifically, the Requesters asked for:

All records relating to the Juvenile Referral Program (“JRP”) ...  
includ[ing], but [] not limited to:

All policies, regulations, practices, procedures, recommendations  
and guidelines implementing or referring to the JRP;

All communications discussing the JRP as a whole or in part or  
individual cases or incidents within the JRP; and

All case files, forms (including Forms 93), or other records in  
CBP’s possession that relate to children that are included within  
the JRP or have been considered for inclusion within the JRP.<sup>1</sup>

We explained that, with respect to our request for information contained in individual case files, we did “not seek these children’s names or other personally identifying information” and understood that CBP “may redact such information from the records provided to us.” A copy of that request is enclosed as Exhibit A.

By letter dated July 22, 2015, and signed by Sharon R. DeShield, Government Information Specialist, CBP stated that “[a] search of CBP databases produced a total of 113 pages of records responsive to your request. CBP has determined

<sup>1</sup> We also provided a list of A-numbers of children who have come to our attention as having been included within the JRP. We explained that we were requesting files relating to these individuals, as well as all other individuals in the JRP.

that 113 pages of the records are partially releasable, pursuant to Title 5 U.S.C. § 552(b)(2), (b)(6) and (b)(7)(C).” A copy of that letter is attached as Exhibit B. The 113-page release (“FOIA Response”) was comprised of the following documents:

1. A heavily-redacted copy of South Texas Campaign Juvenile Referrals Standard Operating Procedures (“SOP”);
2. An unsigned document labeled “WOLA write up-Carlos edits” containing a description of the JRP and talking points on the JRP (“JRP Write-Up”);
3. A memorandum on the Juvenile Referral Standard Operating Procedure dated May 8, 2014;
4. A copy of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457; and
5. A copy of the Supreme Court’s opinion in *Reno v. Flores*, 507 U.S. 292 (1993).

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UNION FOUNDATION

The Requesters appeal the reasonableness of the search for records responsive to its request and the decision to withhold information within the SOP.

#### **I. CBP’s Search was Inadequate.**

Information available to the Requesters demonstrates that numerous responsive records exist but were neither produced nor withheld in response to our request.

CBP failed to adequately search for “all policies, regulations, practices, procedures, recommendations and guidelines implementing or referring to the JRP.”

- CBP’s Performance and Accountability Report Fiscal Year 2014 (“CBP Performance Report”) references the development of the JRP pilot program, but is not accounted for in the agency’s response. U.S. Customs and Border Protection, Performance and Accountability Report Fiscal Year 2014, 42 (“Initiatives in the Rio Grande Valley revealed 98% of targeted or suspected guides were Mexican juveniles. In conjunction with the U.S. Department of Health and Human Services Office of Refugee Resettlement, the South Texas Campaign developed the Juvenile Referral Program pilot initiative to disrupt this trend.”).<sup>2</sup>
- Moreover, the content of the CBP Performance Report indicates that further records regarding the JRP exist. For example, there must be studies, statistics, or investigations that support the CBP Performance

<sup>2</sup> This report is available at [http://www.cbp.gov/sites/default/files/documents/CBP\\_DHS\\_2014%20PAR\\_508C.PDF](http://www.cbp.gov/sites/default/files/documents/CBP_DHS_2014%20PAR_508C.PDF).

Report's statement that "98% of targeted or suspected guides were Mexican juveniles," but the FOIA Response did not include any such records.

- The JRP Write-Up states that "CBP will continue to monitor the JRP to determine if the same process (or something similar) should be expanded to other areas of the Southwest Border." The same document later states that "initial information indicates positive results from the process." Neither this "initial information" nor "positive results" have been disclosed. Nor has CBP provided any records related to the ongoing and continued monitoring described in the JRP Write-Up.

CBP has not provided "all communications discussing the JRP as a whole or in part or individual cases or incidents within the JRP."

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UNION FOUNDATION

CBP's failure to provide records related to any communication—internal or external—about the JRP indicates that it failed to adequately search for "all communications discussing the JRP as a whole or in part or individual cases or incidents within the JRP." For example:

- Based on the existence of the May 8, 2014 memorandum, it is likely that other communications authored by or addressed to the South Texas Campaign Commander exist. The agency almost certainly engaged in intra-agency communications regarding the initiation of the JRP prior to disseminating the May 8, 2014 memorandum. In addition, communication to and from the CBP agents and field officers identified on the memorandum's distribution list also likely exist given that the memorandum provided an email address to which recipients could direct questions.
- The records provided in the FOIA response indicate that there has been intra-agency communication regarding individual JRP cases. The JRP Write-Up states that "the Border Patrol sector Juvenile Coordinator will be advised of a JRP referral so that they may initiate the transfer of the juvenile into the care of Health and Human Services, Office of Refugee Resettlement." Thus, the Border Patrol Sector Juvenile Coordinator must receive and initiate communication when making each referral. There are almost certainly records documenting each referral and likely electronic correspondence about the referral, but not a single document like that has been provided by CBP.
- The CBP Performance Report states that the JRP was developed "in conjunction with the U.S. Department of Health and Human Services Office of Refugee Resettlement." Although developing the JRP surely required communication and correspondence between the two agencies, no record to that effect was contained in the FOIA response.
- The JRP Write-Up states that, "[i]n addition to the ongoing local coordination efforts between the U.S. Border Patrol and Mexican

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

Consulates throughout South Texas, DHS and CBP leadership have provided information concerning the JRP to the Mexican Embassy in Washington, D.C., and requested that Mexico work toward providing alternate options for social assistance and/or reformative action in Mexico.” The FOIA response does not include any communications either between CBP and the Mexican Consulates in South Texas; or between CBP and the Mexican Embassy in Washington, D.C.; or between CBP’s South Texas offices and DHS or CBP leadership—either regarding coordination with consulates, or providing information necessary to communicate with the Mexican Embassy.

- The JRP Write-Up also indicates that CBP is considering expansion of the JRP, but the FOIA response does not include any related discussions, correspondence, or other records.
- The SOP states that the participating sectors “will make every attempt necessary to pursue Federal, State or local prosecution.” No communication between CBP and federal, state, or local prosecutors has been disclosed.

CBP did not provide *any*, much less “[a]ll case files, forms (including Forms 93), or other records in CBP’s possession that relate to children that are included within the JRP or have been considered for inclusion within the JRP.” (emphasis added).

- The JRP Write-Up provides data including the total number of referrals and the current number of juveniles referred to the JRP. This demonstrates that CBP is tracking JRP cases in some manner. In addition, the Office of Refugee Resettlement (“ORR”) has stated that CBP marks all files of juveniles in the JRP to indicate that the children are included in the JRP. Despite the fact that CBP appears to have internally identified the relevant files, the FOIA response does not include the case files or any information regarding these cases.
- CBP did not provide case files, communications, or any other records associated with the A-numbers provided in Exhibit A to the request.
- At a minimum, records that relate to children who have been or are referred to the JRP include:
  - CBP Form 93;
  - Form I-213;
  - Form I-770;
  - Entries in the e3 Detention Module and SIGMA;<sup>3</sup>
  - “UAC placement form” (or other written recommendation for

<sup>3</sup> See U.S. Gov’t Accountability Office, GAO-15-521, *Unaccompanied Alien Children: Actions Need to Ensure Children Receive Required Care in U.S. Custody* 102 (2015).

- placement of juveniles in the JRP);<sup>4</sup>
- Email referrals between CBP and ORR to refer and place each juvenile and related manual data entries;<sup>5</sup>
- Records of any attempt to refer the juvenile to the Anti-Trafficking in Persons Program or the Office on Trafficking in Persons; and
- Records of any attempt to refer the juvenile to the Homeland Security Investigations unit or any other law enforcement entity.

CBP did not provide “other records in CBP’s possession” that relate to children in the JRP.

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- The JRP Write-Up states, “the JRP is applicable to UACs with documented or self-admitted criminal activity.” It also states that “information on the current incident, criminal history, and any records of previous smuggling events . . . are provided to the sector prosecutions office who work closely with the U.S. Attorney [sic] office to determine if the case will be accepted for criminal prosecution.” This information gathered by CBP should be disclosed as responsive to our request for “other records in CBP’s possession” that relate to children in the JRP and/or “communications discussing the JRP” or cases therein.
- The JRP Write-Up also acknowledges that the JRP is “sometimes referred to as the Juvenile Referral Program.” The FOIA response does not contain any documents that use the term “Juvenile Referral Program,” which suggests that there are likely other communications that use the term “Juvenile Referral Program” that have not been provided.
- On or about January 13, 2015, and possibly on other occasions, Commander Robert Harris, of the CBP South Texas Campaign, took part in a telephonic briefing organized to provide information about the JRP to stakeholders. CBP must possess records related to preparation for those briefings, but none are included in the FOIA response. In addition, during the call, Harris discussed:
  - A “rigorous” analysis of JRP data that he commissioned to, as he explained it, determine who is at the top of criminal enterprises in South Texas;
  - A “180-day analysis” to determine which aspects of the JRP are working and which aspects are not working; and
  - A series of questions that had been developed to ask potential candidates for the JRP about their involvement with cartels.

The two analyses and the questioning protocol that Commander Harris mentioned are plainly responsive to the FOIA request. So too are the

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<sup>4</sup> *Id.* at 19 n.30.

<sup>5</sup> *Id.* at 48-49, 52.



underlying records that were consulted to create the analyses, as well as records relating to the development of the questioning protocol.

- As part of the same briefing, another CBP officer or agent indicated that:
  - For each child who is referred to the JRP, CBP fills out a request indicating that CBP is requesting a secure or staff-secure placement for the child;
  - CBP was linking ORR to its database to automate tracking of children who are or have been in the JRP; and
  - CBP has JRP conference calls along with representatives from the ORR and Immigration and Customs Enforcement (“ICE”).

Thus, requests for secure detention records, database records relating to JRP children, and records relating to conference calls with ORR and ICE should have been included in the FOIA Response, but were not.

- CBP has not provided any records related to the training or instruction of officers who apprehend, screen, or refer juveniles to the JRP.

In sum, the Requesters are confident that additional records responsive to their request exist. The failure to produce those records violates the FOIA. Therefore, we request that the agency immediately undertake an adequate search for responsive documents and produce the records identified in that search. In your response to this appeal, please describe the searches that the agency has conducted, including any search terms employed and information systems searched. To the extent that CBP denies the existence of these records or constructively denies it by failing to produce them, Requesters may rely on that statement in other fora.

## **II. CBP Unlawfully Withheld Information.**

CBP unlawfully withheld information from the SOP.

CBP has entirely redacted the “Procedures” section of the SOP, citing 5 U.S.C. § 552(b)(2) (“Exemption 2”). But Exemption 2 can only apply to records “related solely to the internal personnel rules and practices of an agency.” In *Milner v. Department of Navy*, 562 U.S. 562 (2011), the Supreme Court further explained that Exemption 2 only encompasses “employee relations or human resource matters,” but does *not* exempt “internal rules and practices,” or “any rule or practice that assists an employee in doing her job,” from disclosure. *Id.* at 578. It clarified that “[a]ll the rules and practices referenced in Exemption 2 share a critical feature: They concern the conditions of employment in federal agencies—such matters as hiring and firing, work rules and discipline, compensation and benefits.” *Id.* at 570. It is that sort of information, not information about the way that agency employees perform their jobs, that Exemption 2 protects. *Id.* at 578.

The Procedures section of the SOP apparently sets forth agency policies and instructions about how to classify children as “unaccompanied juvenile smuggler[s]/guide[s]” and what to do with those children once they are so classified. It is not an “employee relations or human resource” document that is properly subject to Exemption 2.

CBP also withheld information in the “Disclosure” section of the SOP, citing Exemptions 6 and 7. Exemption 6 covers “personnel or medical files and similar files” when the release “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). Exemption 7 protects “records or information compiled for law enforcement purposes” that “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C).

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The unredacted portion of the “Disclosure” section states that the SOP is an internal CBP policy and will remain in effect until it is cancelled or suspended. No aspect of the document has anything to do with an individual’s personal information or any other information that could be construed as an invasion of privacy. Therefore, exemptions 6 and 7 appear inapplicable. Even if the portion redacted pursuant to exemptions 6 and 7 contains names of federal employees, CBP has provided no basis for withholding those names and the balancing test set forth in *United States Department of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989), tips in the Requesters’ favor. *See id.* (recognizing that there is a legitimate interest in “knowing what [the] Government is up to”).

In sum, the redactions to the SOP are not justified under the FOIA. Therefore, we request that you immediately provide us with an unredacted copy of the SOP.

Thank you for your timely consideration of this appeal.

Sincerely,

/s/ Lindsay Nash  
Omar C. Jadwat  
ACLU Immigrants’ Rights Project

Enc: Exh. A (Requesters’ Nov. 25, 2014 FOIA Request)  
Exh. B (CBP’s July 22, 2015 Response)

# **EXHIBIT D**

LEGAL DEPARTMENT  
IMMIGRANTS'  
RIGHTS PROJECT



September 10, 2015

VIA ELECTRONIC MAIL

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street SW, Stop 5009  
Washington, D.C. 20536-5009

ICE-FOIA@dhs.gov

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
IMMIGRANTS'  
RIGHTS PROJECT

PLEASE RESPOND TO:  
CALIFORNIA OFFICE  
39 DRUMM STREET  
SAN FRANCISCO, CA 94111-4805  
T/415.343.0770  
F/415.395.0950

125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2660  
F/212.549.2654  
[WWW.ACLU.ORG](http://WWW.ACLU.ORG)

OFFICERS AND DIRECTORS  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

ROBERT REMAR  
TREASURER

Re: Freedom of Information Act (FOIA) Request  
Juvenile Referral Program

Dear FOIA Officer,

The American Civil Liberties Union Foundation ("ACLU") and the Women's Refugee Commission ("WRC") ("Requestors") submit this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq. We ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E), and that we be granted a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

**Request for Information**

The Requestors request disclosure of the following records<sup>1</sup> that were prepared, received, transmitted, collected and/or maintained by the U.S. Immigration Customs Enforcement ("ICE"), including but not limited to records prepared, received, transmitted, collected and/or maintained at ICE Headquarters:

All records relating to the Juvenile Referral Program ("JRP").

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<sup>1</sup> The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to training manuals, correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

By “Juvenile Referral Program” we mean:

- Any program or policy referred to by the Office of Refugee Resettlement (“ORR”) or the U.S. Customs and Border Protection (“CBP”) or any of its components as the “Juvenile Referral Program,” the “Juvenile Referral Process,” or the “Mexican Juvenile Referral Program”;
- Any program or policy first implemented in 2014 relating to children<sup>2</sup> suspected of being “foot guides,” “river guides,” “smuggling guides,” or “circuit children” or otherwise suspected of being involved in assisting others to cross the U.S.-Mexico border; and
- Any program or policy involving the referral or potential referral of children for prosecution by federal, state, or local authorities.

This request includes, but is not limited to:

- All policies, regulations, practices, procedures, recommendations and guidelines implementing or referring to the JRP;
- All communications discussing the JRP as a whole or in part or individual cases or incidents within the JRP; and
- All case files, forms (including Forms 93, Forms I-213, and Forms I-770), or other records in ICE’s possession that relate to children that are included within the JRP or have been considered for inclusion within the JRP. Our understanding is that this category of records will include case files relating to most or all of the A-numbers listed in Exhibit A, as well as additional case files. (We do not seek these children’s names or other personally identifying information, and you may redact such information from the records provided to us.)

### **Request for Expedited Processing**

An expedited processing request “may be made at the time of the initial request for records or at any later time.” 6 C.F.R. § 5.5(d)(2). A “requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person’s knowledge and belief, explaining in detail the basis for requesting expedited processing.” 6 C.F.R. § 5.5(d)(3). In compliance with these procedural requirements, the Requestors submit this expedited processing request at the time of our initial records request and certify that the information in this request is true to the best of our knowledge and belief. *See supra* p. 5.

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2 The term “children” as used herein includes all individuals under 18 years old.

Expedited processing is warranted because there is “an urgency to inform the public about an actual or alleged federal government activity” and the request is made by entities “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(d)(ii). The request relates not to “government activity generally,” *cf.* 6 C.F.R. § 5.5(d)(3), but to a possible large scale violation of children’s due process rights.

First-hand reports from children, their attorneys, along with statements of federal officials, suggest that under the JRP, the federal government is systematically subjecting hundreds of children to confinement for months at a time to punish them for suspected criminal activity, without trial. Reports further suggest that the government interrogates these children about suspected criminal activity without providing them with counsel and without protective measures commensurate with their vulnerable status. There is an “urgency to inform the public about [this] actual or alleged governmental activity” because (1) exposure of this practice to public scrutiny could cause it to stop, sparing children from additional confinement and interrogation; and (2) the government should not be able to shield an ongoing violation of children’s fundamental due process rights from public view.

Furthermore, there is intense public interest in issues relating to unaccompanied children and trafficking. A search for articles published in the last year that referred to unaccompanied children and the border in Westlaw’s news database resulted in over 5,000 hits. A search for articles published in the last year that referred to unaccompanied children and trafficking or smuggling resulted in over 3,700 hits.

Despite this widespread interest, little or no information about the JRP is available in the public domain. Searches of CBP’s website have revealed only a one-sentence reference to the JRP in CBP’s Performance and Accountability Report Fiscal Year 2014.<sup>3</sup> A broader internet search yields only short media articles,<sup>4</sup> one blog,<sup>5</sup> and one organization report<sup>6</sup> referencing JRP. This

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3 U.S. Customs and Border Protection, Performance and Accountability Report Fiscal Year 2014, 42, [http://www.cbp.gov/sites/default/files/documents/CBP\\_DHS\\_2014%20PAR\\_508.C.PDF](http://www.cbp.gov/sites/default/files/documents/CBP_DHS_2014%20PAR_508.C.PDF).

4 Joshua Partlow, Mexican kids held for months as punishment for border-crossing, The Washington Post (Mar. 11, 2015), [http://www.washingtonpost.com/world/the\\_americas/mexican-kids-held-for-months-as-punishment-for-border-crossing/2015/03/10/311d319a-b2f2-11e4-bf39-5560f3918d4b\\_story.html](http://www.washingtonpost.com/world/the_americas/mexican-kids-held-for-months-as-punishment-for-border-crossing/2015/03/10/311d319a-b2f2-11e4-bf39-5560f3918d4b_story.html); Angel Villarino, Busca EU disuadir a niños 'coyotes', Reforma (Sept. 24, 2014), <http://www.reforma.com/aplicaciones/articulo/default.aspx?id=348413>.

5 Natasha Pizzey, et al., Forgotten on 'La Frontera': Mexican Children

informational void on a topic of intense public interest further demonstrates the urgency of this request.

The Requestors are “primarily engaged in disseminating information” and thus warrant expedited processing. 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(d)(3). Further, the Department of Homeland Security’s (“DHS”) regulations specifically provide that “information dissemination . . . need not be [a requestor’s] sole occupation,” and it is our view that the Requestors meet the standard for expedited processing. 6 C.F.R. § 5.5(d)(3). The WRC is an expert resource and advocacy organization that monitors the care and protection of refugee women and children. It disseminates information about these issues to governments, policy makers, and the general public. The WRC’s Migrant Rights and Justice Program conducts extensive research and regularly publishes reports on detained immigrant children in U.S. federal custody, including the seminal publications *Halfway Home* and *Forced from Home*. The WRC publishes a newsletter distributed via email, maintains a blog, releases information via social media platforms, and regularly shares its findings through print and televised media platforms, as well as its website, [www.womensrefugeecommission.org](http://www.womensrefugeecommission.org). The WRC often conducts original research and places facts in a legal and policy context like media organizations, which the regulations regard as automatically meeting the “information dissemination” requirement. *See* 6 C.F.R. § 5.5(d)(3) (“a full-time member of the news media” need not “establish that he or she is a person whose main professional activity or occupation is information dissemination.”).

For its part, the ACLU publishes newsletters, provides news briefings, and publishes and disseminates reports on civil liberties issues, right-to-know documents, and other materials to the public through its communications department, its 53 state-based affiliates, and its public website, [www.aclu.org](http://www.aclu.org). Among other civil liberties and civil rights issues, the ACLU’s website addresses immigrants’ rights issues in depth (at [www.aclu.org/immigrants](http://www.aclu.org/immigrants)), provides features on immigrants’ rights issues in the news, and contains hundreds of primary source documents created or obtained by ACLU staff. The website, which received over 13.9 million visits in 2013, specifically features information obtained through FOIA requests. The ACLU also publishes an electronic newsletter distributed via email; airs regular podcasts; maintains a blog, releases information via social media platforms; and has produced a television series on civil liberties issues.<sup>7</sup>

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Fleeing Violence Are Rarely Heard, Washington Office on Latin America (Jan. 22, 2015), [http://www.wola.org/commentary/forgotten\\_at\\_the\\_border](http://www.wola.org/commentary/forgotten_at_the_border).

<sup>6</sup> Center for Gender & Refugee Studies, Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges, 8 (Feb. 2015), [http://cgrrs.uchastings.edu/sites/default/files/14\\_WRC\\_Border\\_English.pdf](http://cgrrs.uchastings.edu/sites/default/files/14_WRC_Border_English.pdf).

<sup>7</sup> The ACLU and WRC are also “representative[s] of the news media” within the meaning of the statute and applicable regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (defining a representative of the news media as an entity that “gathers information of potential interest to a segment of the public” and



Upon receipt of the records requested, the Requestors will review them carefully and will disseminate newsworthy information through the channels available to them.

### **Request for Waiver of Fees**

The requestors ask that all fees associated with this FOIA request be waived. We are entitled to a waiver of all costs because disclosure of the information is “...likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, the Requestors have the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003).

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities. The records requested relate directly to governmental operations or activities; all are directly traceable to a specific federal government program, the JRP. Release of these records will contribute significantly to public understanding of the JRP, and more broadly to the processing of unaccompanied children at the border and governmental treatment of children suspected of being involved in smuggling activity. As noted above, although these are areas of intense public concern, there is virtually no information about the JRP available to the public. Thus, the requested information would significantly enhance the public’s understanding of the JRP and the broader topics it relates to.

Disclosure is not within the commercial interest of the Requestors. The ACLU and WRC are not-for-profit organizations that do not seek to disseminate the information for the purpose of commercial gain. Moreover, “a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.” 6 C.F.R. § 5.11(b)(6). As explained above, this request falls within § 5.11(b)(6) because it supports both Requestors’ dissemination of information relating to a topic of current interest to the public. In this respect, the request strongly resembles the many previous instances in which the government waived all fees associated with responding to FOIA requests by the ACLU.<sup>8</sup>

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<sup>8</sup> “uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience”); *see also Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1397 (D.C. Cir. 1989) (same); 6 C.F.R. § 5.11(b)(6) (defining representative of the news media as “any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public”).

<sup>8</sup> The following are recent examples of requests in which agencies did not charge the



In any event, the Requestors are “representative[s] of the news media” and do not seek the records requested for commercial use. Accordingly, even if any fees could be charged relating to the processing of the request, they would be “limited to reasonable standard charges for document duplication” alone. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

\* \* \*

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We certify that the information in this request is true to the best of our knowledge and belief.

If this request is denied in whole or in part, the ACLU asks that the government justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect the government to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding our request for expedited processing, we alternatively look forward to your reply to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

Please direct any correspondence and provide any records to Omar C. Jadwat, either by email to [ojadwat@aclu.org](mailto:ojadwat@aclu.org) or at the address below. Thank you for your prompt attention to this request.

Sincerely,

/s/ Omar C. Jadwat  
ACLU Immigrants' Rights Project  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004

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ACLU fees associated with responding to its FOIA requests: (1) a FOIA request submitted to the Department of State in April 2005; (2) a FOIA request submitted to the National Institute of Standards and Technology in April 2005; (3) a FOIA request submitted to the Office of Science and Technology in the Executive Office of the President in August 2003; (4) a FOIA request submitted to the Federal Bureau of Investigation in August 2002; (5) a FOIA request submitted to the Office of Intelligence Policy and Review in August 2002; (6) a FOIA request submitted to the Office of Information and Privacy in the Department of Justice in August 2002.

/s/ Jennifer Podkul  
Migrant Rights and Justice Program  
Women's Refugee Commission  
1012 14th St. NW, Suite 1100  
Washington, D.C. 20005

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EXHIBIT A  
*List of A-Numbers*

A 202-000-415  
A 202-001-394  
A 202-030-878  
A 202-030-948  
A 205-517-292  
A 205-517-378  
A 205-517-463  
A 205-641-950  
A 205-642-071  
A 205-645-799  
A 205-726-738  
A 205-732-315  
A 205-841-497  
A 205-841-567  
A 205-841-676  
A 206-159-844  
A 206-316-246  
A 206-360-464  
A 206-693-644  
A 206-726-950  
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A 206-756-278  
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A 206-770-294  
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A 206-772-617  
A 206-772-617  
A 206-775-149  
A 206-779-155  
A 206-779-401  
A 206-779-995  
A 206-780-173  
A 206-794-795

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A 206-795-501  
A 206-795-502  
A 206-796-342  
A 206-796-454  
A 206-797-056  
A 206-797-057  
A 206-798-972  
A 206-799-663  
A 206-799-990  
A 206-800-296  
A 206-800-448  
A 206-800-630  
A 206-802-293  
A 206-802-293  
A 206-802-407  
A 206-802-509  
A 206-802-815  
A 206-803-003  
A 206-804-727  
A 206-805-186  
A 206-805-197  
A 206-805-198  
A 206-805-200  
A 206-807-259  
A 206-807-529  
A 206-807-546  
A 206-807-554  
A 206-807-622  
A 206-807-687  
A 206-807-744  
A 206-807-771  
A 206-807-773  
A 206-843-157  
A 206-843-682  
A 206-843-682  
A 206-846-866  
A 206-870-519

# **EXHIBIT E**

**Lindsay Nash**

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**Subject:** FW: ICE FOIA Request 2015-ICFO-97426  
**Attachments:** ICE Ack Letter (Transfer to CBP).docx; ATT00001.htm; ICE Ack Letter (Transfer to USCIS).docx; ATT00002.htm

**From:** [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov)  
**Date:** September 16, 2015 at 11:48:48 AM EDT  
**To:** [ojadwat@aclu.org](mailto:ojadwat@aclu.org)  
**Subject:** ICE FOIA Request 2015-ICFO-97426

September 16, 2015

Omar Jadwat  
ACLU Immigrants' Rights Project  
125 Broad St, 18th Floor  
New York, NY 10004

**RE: ICE FOIA Case Number 2015-ICFO-97426**

Dear Mr. Jadwat:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated September 10, 2015, and to your request for expedited treatment and a waiver of all assessable FOIA fees. Your request was received in this office on September 16, 2015. Specifically, you requested records maintained by ICE related to the Juvenile Referral Program ("JRP"), including all policies, regulations, practices, procedures, recommendations and guidelines; communications discussing the JRP as a whole or in part or individual cases or incidents within the JRP; case files or other records in ICE's possession that relate to children what are included within the JRP or have been considered for inclusion within the JRP.

Your request for expedited treatment is hereby denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," 6 C.F.R. § 5.5(d)(1)(i), or "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(1)(ii). Requesters seeking expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(d)(3).

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(d)(1). You have not established that lack of expedited treatment in this case will pose an imminent threat to the life or physical safety of an individual. The information sought in your request is retrospective and you have not established that the information would have a bearing on immediate or resultant future situations. In addition, you are not primarily engaged in the dissemination of information to the public. You have not shown that you have the ability to educate the public beyond your limited constituency, nor have you established with the requisite specificity why you feel there is an urgency to inform your limited audience about past ICE actions. Qualifying urgency would need to exceed the public's right to know about government activity generally. Finally, you did not offer any supporting evidence of public interest that is any greater than the public's general interest in the JRP.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10- day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

As it pertains to your request for a fee waiver, after thoroughly reviewing your letter, ICE has determined that you have not presented a convincing argument that **ACLU Immigrants' Rights Project** is entitled to a blanket waiver of applicable fees.

The DHS FOIA Regulations at 6 CFR § 5.11(k)(2) set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met. We will consider these factors in our evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requestor has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

As a requester, you bear the burden under FOIA of showing that the fee waiver requirements have been met. Based on my review of your September 10, 2015 letter and for the reasons stated herein, I have determined that your fee waiver request is deficient because your request has failed to satisfy factors 4, 5, and 6. Since your request for a fee waiver has failed to satisfy each of the required factors, I am denying your fee waiver request.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester, you will be charged 10 cents per page for duplication; the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

You have the right to appeal the determination to deny your request for expedited treatment and a fee waiver. Should you wish to do so, please send your appeal following the procedures outlined in the DHS regulations at 6 Code of Federal Regulations § 5.9 and a copy of this letter to:

U.S. Immigration and Customs Enforcement  
Office of Principal Legal Advisor  
U.S. Department of Homeland Security  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009

Your appeal must be received within 60 days of the date of this letter. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

ICE has queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2015-ICFO-97426**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2014-ICFO-XXXXX or 2015-ICFO-XXXXX tracking number. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Regards,

ICE FOIA Office  
Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009  
Telephone: 1-866-633-1182  
Visit our FOIA website at [www.ice.gov/foia](http://www.ice.gov/foia)



# **EXHIBIT F**

LEGAL DEPARTMENT  
IMMIGRANTS'  
RIGHTS PROJECT



October 27, 2015

VIA OVERNIGHT DELIVERY

U.S. Immigration and Customs Enforcement  
Office of Principal Legal Advisor  
U.S. Department of Homeland Security  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
IMMIGRANTS'  
RIGHTS PROJECT

PLEASE RESPOND TO:  
CALIFORNIA OFFICE  
39 DRUMM STREET  
SAN FRANCISCO, CA 94111-4805  
T/415.343.0770  
F/415.395.0950

125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2660  
F/212.549.2654  
[WWW.ACLU.ORG](http://WWW.ACLU.ORG)

OFFICERS AND DIRECTORS  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

ROBERT REMAR  
TREASURER

**Re: FOIA APPEAL: Appeal of Denial of Expedited Processing and  
Denial of Fee Waiver, ICE FOIA Case Number 2015-ICFO-97426**

Dear Sir/Madam:

The Immigrants' Rights Project of the American Civil Liberties Union ("ACLU") and the Women's Refugee Commission ("WRC") write to appeal the denial of expedited processing and a fee waiver in relation to our September 16, 2015 request ("Request") under the Freedom of Information Act ("FOIA"), No. 2015-ICFO-97426, which seeks all Immigration and Customs Enforcement ("ICE") records relating to the Juvenile Referral Program ("JRP"). The letter in which ICE denied expedited processing and a fee waiver is attached as Exhibit A, and the FOIA request, which includes the request for expedited processing and a fee waiver, is attached as Exhibit B.

**I. The Requesters are Entitled to Expedited Processing.**

Under the FOIA, as well as ICE regulations, Requesters are entitled to expedited processing of their FOIA request. The FOIA provides requesters a right to have their request processed expeditiously when the request is "made by a person primarily engaged in disseminating information" and there is an "urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(d)(1)(ii) (same). As the Request made clear, Requesters satisfied both criteria.

In its letter denying expedited processing, ICE stated that the Requesters did not qualify for expedited processing under 6 C.F.R. § 5.5(d)(1)(ii) because

The information sought in your request is retrospective and you have not established that the information would have a bearing on immediate or resultant future situations. In addition, you are not primarily engaged in the dissemination of information

to the public. You have not shown that you have the ability to educate the public beyond your limited constituency, nor have you established with the requisite specificity why you feel there is an urgency to inform your limited audience about past ICE actions. Qualifying urgency would need to exceed the public's right to know about government activity generally. Finally, you did not offer any supporting evidence of public interest that is any greater than the public's general interest in the JRP.

Ex. A at 1.

These conclusions are incorrect. We explained at pages 2 to 5 of our request why we are entitled to expedited processing, with specific references to both the statute and the regulations. We incorporate the entirety of our request letter by reference in this appeal, and refer you to that letter for a detailed explanation of our position. For the sake of clarity, the Requesters briefly address the errors in ICE's denial letter.

First, the information requested—which relates to policies and procedures used in the JRP—has immediate and resultant bearing on future situations. Over 200 Mexican children are being held in detention centers pursuant to the JRP and hundreds have been detained and subsequently deported through that program: information about the enforcement program used against them has an immediate effect on their ability to understand and challenge their detention and deportation orders. As we noted in our request, this program appears to be “subjecting hundreds of children to confinement for months at a time to punish them for suspected criminal activity, without trial,” and exposure of this practice to public scrutiny could cause it to stop, sparing children from additional confinement and interrogation” and that “the government should not be able to shield an ongoing violation of children's fundamental due process rights from public view.” Ex. B at 3. ICE's conclusory denial letter did not refute or even address these facts. In addition, a high-level Department of Homeland Security officer recently stated that the agency is currently evaluating the JRP and may incorporate elements of JRP into the general screening process (which is currently being revised) for unaccompanied children entering the United States. Understanding that process is critical for policymakers, advocates, and the general public, to have input on the revisions to the screening process that are currently underway.

Second, as the Request makes abundantly clear, Requesters are organizations primarily engaged in disseminating information. *See* Ex. B at 4; *see also* 6 C.F.R. § 5.5(d)(3). The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are widely disseminated to the

public. These materials are made available to everyone—including tax-exempt organizations, non-profit groups, and law students and law faculty—at no cost or for a nominal fee. The ACLU also disseminates information through its high-traffic website, <http://www.aclu.org>, which provides in-depth information on a range of civil liberties issues; addresses civil liberties issues that are currently in the news; and contains hundreds of documents relating to the ACLU’s work. The website specifically features information obtained through FOIA. The ACLU also publishes an electronic newsletter, which is distributed to subscribers via email; airs regular podcasts; maintains several blogs at <https://www.aclu.org/blog>; publishes information via social media platforms such as Facebook and Twitter; and works with influential creative artists in film, television, music, and comedy to educate the public.

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Similarly, the Requesters explained that the WRC is an expert resource and advocacy organization that monitors the care and protection of refugee women and children. *See* Ex. B at 4. WRC disseminates information about these issues to governments, policy makers, and the general public. The WRC’s Migrant Rights and Justice Program conducts extensive research and regularly publishes reports on detained immigrant children in U.S. federal custody, including the seminal publications *Halfway Home* and *Forced from Home*. The WRC publishes a newsletter distributed via email, maintains a blog, releases information via social media platforms, and regularly shares its findings through print and televised media platforms, as well as its website, [www.womensrefugeecommission.org](http://www.womensrefugeecommission.org). The WRC often conducts original research and places facts in a legal and policy context like media organizations, which the regulations regard as automatically meeting the “information dissemination” requirement. *See* 6 C.F.R. § 5.5(d)(3) (“a full-time member of the news media” need not “establish that he or she is a person whose main professional activity or occupation is information dissemination.”). And, as stated in the Request, the Requesters would disseminate newsworthy information received through this Request. Ex. B at 5.

These characteristics clearly make the Requesters “representative[s] of the news media organization” for purpose of FOIA. *See Nat’l Security Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (noting a requester is a representative of the news media where it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”) (construing 5 U.S.C. § 552(a)(4)(A)(iii)); *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10 (D.D.C. 2003) (“any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’”). Courts have recognized that organizations that meet the “representative of the news media” standard necessarily meet the “primarily engaged in disseminating

information” standard. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29, n.5 (D.D.C. 2004). Indeed, courts have specifically recognized that advocacy organizations like the ACLU, which disseminate information and conduct public education on civil rights issues, are entitled to expedited processing. *See Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (holding that an organization that “disseminates information regarding civil rights . . . to educate the public, promote effective civil rights laws and ensure their enforcement by the Department of Justice” was entitled to expedited processing).

To the extent that there is any doubt, we note that the regulations specifically provide that “information dissemination . . . need not be [a requester’s] sole occupation.” 6 C.F.R. 5.5(d)(3). It is our view that both requesters meet the standard for expedited processing but, for the purposes of this appeal, we underline that requester WRC is a “resource and advocacy organization.” Ex. B at 4. The way that such an organization accomplishes its goals is primarily, if not entirely, by “disseminat[ing] information about . . . issues to governments, policy makers, and the general public.” *Id.* Of course, in doing so, the WRC often conducts original research and places facts in a legal and policy context; but so do media organizations, which the regulations regard as automatically meeting the “information dissemination” requirement. *See* 6 C.F.R. § 5.5(d)(3) (“a full-time member of the news media” need not “establish that he or she is a person whose main professional activity or occupation is information dissemination.”)

Relatedly, ICE faults the Requesters for failing to “show[] that [they have] the ability to educate the public beyond [their] limited constituency.” Ex. B at 1. But neither the statute nor the regulations require that a requester make such a showing; instead, they require only that the requester be “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(3). *Cause of Action v. FTC*, 779 F.3d 1108, 1123-1124 (D.C. Cir. 2015) (rejecting similar requirement for purposes of public interest fee waiver). As explained above, the Requesters have clearly made that showing here. But even assuming this were a requirement, the Requesters have clearly demonstrated their ability to educate the public at large. *See supra* at 3.<sup>1</sup>

Third, ICE concluded that the Requesters failed to establish that they have a

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<sup>1</sup> The reach of the ACLU information dissemination is wide: the ACLU has more than 500,000 members, and 1,428,571 online activists who participate in its online actions. In mid-August 2015 alone, the combined number of followers for our active social media accounts (ACLU Nationwide Facebook, @ACLU and @ACLUlive Twitter accounts, and Instagram) was 885,248. The ACLU website receives more than 38,000 unique visits and nearly 70,000 page views a day. Over the last two years, the ACLU’s blogs have averaged 12,000 visits per day, with some receiving more than 100,000 visits over that time span. WRC’s reports and trainings have reached thousands of individuals and it has almost 3,000 Twitter followers.

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compelling need for the JRP-related information because they did not provide the “requisite specificity why [they] feel there is an urgency to inform [their] limited audience about past ICE actions.” Ex. A at 1. But, as explained above and in the Request, the information relates to an ongoing enforcement program that may violate children’s due process rights en masse; without information about the program, advocates cannot adequately represent these children, nor can the public participate in a discussion about whether and how the government should implement such an enforcement program. *See* Ex. B at 3. As we emphasized, informing the public about the JRP “could cause it to stop, sparing children from additional confinement and interrogation.” *Id.* The urgency is all the more pressing now because the government is actively considering incorporating elements of the JRP into the screening process for all minors, potentially affecting tens of thousands of children who go through that process annually. *See supra* at 2–3.

Contrary to ICE’s suggestion, the Request relates not to “government activity generally,” *cf.* 6 C.F.R. § 5.5(d)(3), but to a secretive program that results in hundreds of children being held in “confinement for months at a time to punish them for suspected criminal activity, without trial.” Ex. B. If the practice of detaining and deporting individuals for the purpose of punishment is intrinsic to all ICE enforcement, that is all the more reason that the public needs to know about it. Assuming that it is not, however, the need to know about this program, help the children affected, and participate meaningfully in the ongoing revision of DHS’s screening process for unaccompanied children is undeniably greater than “the public’s right to know about government activity generally.” Ex. A at 1.

Relatedly, ICE erred in denying expedited processing on the ground that Requesters did not “offer any supporting evidence of public interest that is any greater than the public’s general interest in the JRP.” Ex. A at 1. Neither the FOIA nor ICE regulations require a showing of this degree of specificity, and it is preposterous for the agency to require that Requesters show some more narrowly focused interest beyond the JRP as a whole when the agency has provided almost *no* information about the program. In any event, the Request notes that the “intense public interest,” as shown by news reporting, in information about the key issues to which the JRP relates: (1) unaccompanied minor children and the border and (2) unaccompanied children and trafficking or smuggling, Ex. B at 5, and explained that there is “little or no information about [the subject of the request] in the public domain.” *Id.*

In sum, as the Request made clear, there is no basis for denying our request for expedited processing.

## II. The Request for a Fee Waiver Should Be Granted.

Both Requesters are entitled to a fee waiver for the instant request. As an initial matter, the letter denying a fee waiver to the ACLU does not address WRC's request for a fee waiver. *See* Ex. A at 2 ("ICE has determined that you have not presented a convincing argument that ACLU Immigrants' Rights Project is entitled to a blanket waiver of applicable fees."). That alone violates the FOIA, as well as ICE's own regulations, *see* 8 U.S.C. § 552(a)(6)(A)(i); 6 C.F.R. § 5.11; *see also* 6 C.F.R. § 5.11(k)(3)–(5) (requiring agencies to consider all relevant factors in fee waiver application), and requires that ICE grant WRC a fee waiver. *See* § 552(a)(4)(A)(viii), *Bensman v. Nat'l Park Serv.*, 806 F. Supp. 2d 31, 33 (D.D.C. 2011).

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### A. The Requesters Should Be Granted a Fee Waiver Because the Information Requested Is in the Public Interest And the Requesters Have No Commercial Interest in the Information.

An agency may charge reasonable fees for "document search, duplication, and review, when records are requested for commercial use." 5 U.S.C. § 552(a)(4)(A)(ii)(I). However, an agency must furnish records without any charge or at a reduced charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution).

ICE's FOIA regulations set forth six factors to "consider" in determining whether the applicable legal standard for a fee waiver has been met:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in



the commercial interest of the requester.

6 CFR § 5.11(k)(2)-(3).

There is no serious dispute that disclosure of the records requested is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). In denying the fee waiver, ICE found that the Request failed to satisfy the following elements:

(4) Whether the contribution to public understanding of government operations or activities will be “significant”;

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Ex. A at 2.

All of these factors justifying granting a fee waiver here. “In determining whether disclosure of records will contribute significantly to the public’s understanding of the operation or activities of the government, it is relevant to consider the subject matter of the requests and the ability of the requester to disseminate the information.” *Carney v. Dep’t of Justice*, 19 F.3d 807, 814 (2d Cir. 1994). The “FOIA does not require that a requester be able to reach a ‘wide audience.’” *Cause of Action*, 779 F.3d at 1124. Rather, “the relevant inquiry . . . is whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject.” *Carney*, 19 F.3d at 815.

It cannot be disputed that disclosure of the requested records would contribute significantly to the public’s knowledge of the policies and practices that comprise the JRP. To the Requesters’ knowledge, there is currently *no* publicly available information that provides a detailed description of ICE’s involvement in a border enforcement program that has resulted in the prosecution and detention of hundreds of unaccompanied Mexican children since its inception in May 2014. *See* Ex. A at 3–4. By definition then, disclosure of the records requested will significantly enhance the public’s understanding of these issues. Moreover, as set forth *supra*, the Requesters are clearly capable of disseminating the information disclosed in response to their Request.



ICE's denial of a fee waiver based on an alleged commercial interest is also clearly wrong. Requesters obviously do *not* have a commercial interest in disclosure. *See* 6 C.F.R. § 5.11(b)(1) (defining a “[c]ommercial use request” as “a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation”), and the Request made this clear. *See* B at 5.<sup>2</sup> Indeed, ICE appears to recognize this lack of a commercial interest in treating the ACLU as a non-commercial requester for billing purposes, *see* Ex. B at 1, and recently acknowledged that the ACLU did not have a commercial interest when it granted a fee waiver to the ACLU in relation to a similar request, *see* Ex. C.

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The ACLU reminds ICE that it is nationwide, nonprofit, nonpartisan organization dedicated to protecting civil rights in the United States. It is the largest civil liberties organization in the country, with offices in 50 states and over 500,000 members. *See* Ex. A at 4. As described above, the Requesters issue publications and uses various kinds of channels—including newsletters, web pages, blogs, and news briefings—to disseminate information to the public *at no cost* and intend to do so the same with any newsworthy information here. *See supra*. Facts like these warrant a fee waiver under the Congress's 1987 amendments to the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” (citation omitted)); *Citizens for Responsibility and Ethics in Wash. v. U.S. Dept. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.” (internal quotation marks and citation omitted)). And, because the Requesters have *no* commercial interest in disclosure, any public interest in disclosure is sufficiently large in comparison with that nonexistent interest.

In any event, the fee waiver determination requires “consider[ing]” the enumerated factors, but does not require that requesters satisfy each factor. Thus, even if ICE were to conclude that the Requesters have not fulfilled certain of the above factors, it should recognize that the Request establishes disclosure of the information “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester,” under the fee waiver criteria as a whole. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k).

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<sup>2</sup> *See also* Office of Mgmt. & Budget, Uniform FOIA Fee Schedule & Guidelines, 52 Fed. Reg. 10,012, 10,017-18 (Mar. 27, 1987) (interpreting “commercial use” in 5 U.S.C. § 552(a)(4)(A)(ii) as a use that “furthers the commercial, trade or profit interests of the requester”).

Ultimately, ICE's decision cannot be squared with the numerous cases in which courts found that nonprofits engaged in public interest advocacy, litigation, and public education, like the ACLU and WRC, do not have "commercial interests" implicated by their FOIA requests and were granted fee waivers.<sup>3</sup> As explained in the Request, the ACLU alone has been granted FOIA fee waivers on many occasions. Ex. B at 5–6.<sup>4</sup> The same should be done here. Indeed, this request strongly resembles prior instances in which ICE has reversed the denial of a fee waiver to the ACLU on appeal.<sup>5</sup>

**B. In the Alternative, the Requesters Should Be Granted a Fee Waiver as**

<sup>3</sup> See, e.g., *FedCURE v. Lappin*, 602 F. Supp. 2d 197, 201 (D.D.C. 2009) (public interest waiver ordered for nonprofit organization that advocates for federal inmate population and their families); *Ctr. For Medicare Advocacy, Inc. v. HHS*, 577 F. Supp. 2d 221, 238–42 (D.D.C. 2008) (public interest waiver ordered for nonprofit that educates and advocates for Medicare beneficiaries).

<sup>4</sup> In addition, agencies did not charge the ACLU fees in the following cases, among others: (1) In September 2015, ICE granted a fee waiver to the ACLU for a FOIA request seeking records about number of persons subject to mandatory and non-mandatory immigration detention over the past year; (2) In March 2012, the Department of Justice (DOJ) Criminal Division granted a fee waiver to the ACLU for a FOIA request seeking records about the government's access to the contents of individuals' private electronic communications; (3) In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act; (4) In November 2010, the Federal Emergency Management Agency (FEMA) granted a fee waiver to the ACLU for a FOIA request seeking documents concerning the FEMA-funded rebuilding of Orleans Parish Prison following Hurricane Katrina. (5) In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody; (6) In January 2010, ICE granted a fee waiver to the ACLU for a FOIA request seeking documents concerning the deaths of detainees in ICE custody; (7) In January 2009, the CIA granted a fee waiver with respect to the same request; (8) In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. DOJ granted a fee waiver to the ACLU with regard to the same FOIA request. (9) In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in that same month.

<sup>5</sup> See, e.g., Letter from Debbie Seguin, ICE Office of the Principal Legal Advisor, re. 2015-ICFO-99765 (Oct. 5, 2015), at 2 (reversing denial of fee waiver based on factors 4, 5, and 6); Letter from Debbie Seguin, ICE Office of the Principal Legal Advisor, re. 2015-ICAP-00436, 2015-ICFO-7415 (July 6, 2015), at 2 (reversing denial of fee waiver based on factors 4, 5, and 6); Letter from Debbie Seguin, ICE Office of the Principal Legal Advisor, re. 2015-ICAP-00536, 2015-ICFO-80352, at 2 (Aug. 5, 2015) (reversing denial of fee waiver based on, *inter alia*, factor 3); Letter from Catrina M. Pavlik-Keenan, FOIA Officer, ICE, re. 2011FOIA4894, at 1 (Mar. 28, 2012) (reversing fee waiver denial based on ACLU of Southern California's ability to disseminate information to the public and its putative commercial interest in the records requested). Notably, ICE reversed its fee waiver denial in 2011FOIA4894 only after the ACLU of Southern California filed suit to challenge its decision. See Complaint, *ACLU of Southern California v. U.S. Immigration and Customs Enforcement*, CV11-10148 (C.D. Cal. filed Dec. 7, 2011).

“Representative[s] of the News Media.”

ICE wholly ignored the Requester’s argument that they are entitled to a fee waiver because they are “representative[s] of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii). However, as described above, there is no question that they are entitled to a fee waiver under this provision. *See supra* at 3–4.

For the foregoing reasons, the appeal should be granted. I look forward to receiving your prompt response. Any correspondence can be directed to Lindsay Nash at [lnash@aclu.org](mailto:lnash@aclu.org).

\*\*\*\*\*

Under penalty of perjury, I certify, to the best of my knowledge and belief, that the above information is true and correct.

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

Sincerely,

/s/

Lindsay Nash  
Skadden Fellow/Staff Attorney  
ACLU Immigrants’ Rights Project  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
212-549-2528  
[lnash@aclu.org](mailto:lnash@aclu.org)

# **EXHIBIT G**

LEGAL DEPARTMENT  
IMMIGRANTS'  
RIGHTS PROJECT



September 10, 2015

VIA ELECTRONIC MAIL

Kimberly N. Epstein  
FOIA Officer  
Administration for Children and Families  
7th Floor East  
Aerospace Building  
370 L'Enfant Promenade, S.W.  
Washington, DC 20447

FOIA@acf.hhs.gov

Re: Freedom of Information Act (FOIA) Request  
Juvenile Referral Program

Dear Ms. Epstein:

The American Civil Liberties Union Foundation ("ACLU") and the Women's Refugee Commission ("WRC") ("Requestors") submit this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq. We ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E), and that we be granted a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

**Request for Information**

The Requestors request disclosure of the following records<sup>1</sup> that were prepared, received, transmitted, collected and/or maintained by the Office of Refugee Resettlement ("ORR"), including but not limited to records prepared, received,

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1 The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to training manuals, correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

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OFFICERS AND DIRECTORS  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

ROBERT REMAR  
TREASURER

transmitted, collected and/or maintained at ORR Headquarters and ORR shelters operated by the Division of Children's Services:

1. All records relating to the Juvenile Referral Program ("JRP").

By "Juvenile Referral Program" we mean:

- Any program or policy referred to by the Office of Refugee Resettlement ("ORR") or the Department of Homeland Security ("DHS") or any of its components as the "Juvenile Referral Program," the "Juvenile Referral Process," or the "Mexican Juvenile Referral Program";
- Any program or policy first implemented in 2014 relating to children<sup>2</sup> suspected of being "foot guides," "river guides," "smuggling guides," or "circuit children" or otherwise suspected of being involved in assisting others to cross the U.S.-Mexico border; and
- Any program or policy involving the referral or potential referral of children for prosecution by federal, state, or local authorities.

This request includes, but is not limited to:

- All policies, regulations, practices, procedures, recommendations and guidelines implementing or referring to the JRP;

All communications discussing the JRP as a whole or in part or individual cases or incidents within the JRP;

- All communications with the DHS or any of its subcomponents regarding JRP as a whole or in part or individual cases or incidents within the JRP; and
- All case files, forms (including Forms 93, Forms I-213, Forms I-770, computer-generated placement recommendations, notices of custody determinations, and statements of reasons for custody determinations), or other records in ORR's possession that relate to children that are included within the JRP or have been considered for inclusion within the JRP. Our understanding is that this category of records will include case files relating to most or all of the A-numbers listed in Exhibit

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<sup>2</sup> The term "children" as used herein includes all individuals under 18 years old.

A, as well as additional case files. (We do not seek these children's names or other personally identifying information, and you may redact such information from the records provided to us.)

2. All policies, regulations, practices, procedures, recommendations and guidelines regarding communications with or input by DHS or any of its subcomponents in making custody determinations and placement decisions; and
3. All policies, regulations, practices, procedures, recommendations and guidelines regarding the exchange of confidential information with DHS or any of its subcomponents.

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

### **Request for Expedited Processing**

Expedited processing is warranted because there is “an urgency to inform the public about an actual or alleged federal government activity” and the request is made by entities “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

First-hand reports from children, their attorneys, along with statements of federal officials, suggest that under the JRP, the federal government is systematically subjecting hundreds of children to confinement for months at a time to punish them for suspected criminal activity, without trial. Reports further suggest that the government interrogates these children about suspected criminal activity without providing them with counsel and without protective measures commensurate with their vulnerable status. There is an “urgency to inform the public about [this] actual or alleged governmental activity” because (1) exposure of this practice to public scrutiny could cause it to stop, sparing children from additional confinement and interrogation; and (2) the government should not be able to shield an ongoing violation of children's fundamental due process rights from public view.

Furthermore, there is intense public interest in issues relating to unaccompanied children and trafficking. A search for articles published in the last year that referred to unaccompanied children and the border in Westlaw's news database resulted in over 5,000 hits. A search for articles published in the last year that referred to unaccompanied children and trafficking or smuggling resulted in over 3,700 hits.

Despite this widespread interest, little or no information about the JRP is available in the public domain. Searches of CBP's website have revealed only a one-sentence reference to the JRP in CBP's Performance and Accountability Report Fiscal Year 2014, which specifically states that the JRP was developed in

conjunction with ORR.<sup>3</sup> A broader internet search yields only short media articles,<sup>4</sup> one blog,<sup>5</sup> and one organization report<sup>6</sup> referencing the JRP. This informational void on a topic of intense public interest further demonstrates the urgency of this request.

The Requestors are “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II). The WRC is an expert resource and advocacy organization that monitors the care and protection of refugee women and children. It disseminates information about these issues to governments, policy makers, and the general public. The WRC’s Migrant Rights and Justice Program conducts extensive research and regularly publishes reports on detained immigrant children in U.S. federal custody, including the seminal publications *Halfway Home* and *Forced from Home*. The WRC publishes a newsletter distributed via email, maintains a blog, releases information via social media platforms, and regularly shares its findings through print and televised media platforms, as well as its website, [www.womensrefugeecommission.org](http://www.womensrefugeecommission.org).

For its part, the ACLU publishes newsletters, provides news briefings, and publishes and disseminates reports on civil liberties issues, right-to-know documents, and other materials to the public through its communications department, its 53 state-based affiliates, and its public website, [www.aclu.org](http://www.aclu.org). Among other civil liberties and civil rights issues, the ACLU’s website addresses immigrants’ rights issues in depth (at [www.aclu.org/immigrants](http://www.aclu.org/immigrants)), provides features on immigrants’ rights issues in the news, and contains hundreds of primary source documents created or obtained by ACLU staff. The website, which received over 13.9 million visits in 2013, specifically features information obtained through FOIA requests. The ACLU also publishes an electronic newsletter distributed via email; airs regular podcasts; maintains a blog, releases

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3 U.S. Customs and Border Protection, Performance and Accountability Report Fiscal Year 2014, 42, [http://www.cbp.gov/sites/default/files/documents/CBP\\_DHS\\_2014%20PAR\\_508.C.PDF](http://www.cbp.gov/sites/default/files/documents/CBP_DHS_2014%20PAR_508.C.PDF).

4 Joshua Partlow, Mexican kids held for months as punishment for border-crossing, *The Washington Post* (Mar. 11, 2015), [http://www.washingtonpost.com/world/the\\_americas/mexican-kids-held-for-months-as-punishment-for-border-crossing/2015/03/10/311d319a-b2f2-11e4-bf39-5560f3918d4b\\_story.html](http://www.washingtonpost.com/world/the_americas/mexican-kids-held-for-months-as-punishment-for-border-crossing/2015/03/10/311d319a-b2f2-11e4-bf39-5560f3918d4b_story.html); Angel Villarino, Busca EU disuadir a niños 'coyotes', *Reforma* (Sept. 24, 2014), <http://www.reforma.com/aplicaciones/articulo/default.aspx?id=348413>.

5 Natasha Pizzey, et al., Forgotten on 'La Frontera': Mexican Children Fleeing Violence Are Rarely Heard, Washington Office on Latin America (Jan. 22, 2015), [http://www.wola.org/commentary/forgotten\\_at\\_the\\_border](http://www.wola.org/commentary/forgotten_at_the_border).

6 Center for Gender & Refugee Studies, Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges, 8 (Feb. 2015), [http://cgrrs.uchastings.edu/sites/default/files/14\\_WRC\\_Border\\_English.pdf](http://cgrrs.uchastings.edu/sites/default/files/14_WRC_Border_English.pdf).



information via social media platforms; and has produced a television series on civil liberties issues.<sup>7</sup>

Upon receipt of the records requested, the Requestors will review them carefully and will disseminate newsworthy information through the channels available to them.

### **Request for Waiver of Fees**

The requestors ask that all fees associated with this FOIA request be waived. We are entitled to a waiver of all costs because disclosure of the information is “...likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 45 C.F.R. § 5.45(a) (records furnished without charge or at a reduced rate if the information is in the public interest “because it is likely to contribute significantly to public understanding of the operations or activities of the government,” and disclosure is not in commercial interest of requestor). In addition, the Requestors have the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003).

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities. The records requested relate directly to governmental operations or activities; all are directly traceable to a specific federal government program, the JRP. Release of these records will contribute significantly to public understanding of the JRP, and more broadly to the processing of unaccompanied children at the border and governmental treatment of children suspected of being involved in smuggling activity. As noted above, although these are areas of intense public concern, there is virtually no information about the JRP available to the public. Thus, the requested information would significantly enhance the public’s understanding of the JRP and the broader topics it relates to.

Disclosure is not within the commercial interest of the Requestors. The ACLU and WRC are not-for-profit organizations that do not seek to disseminate the information for the purpose of commercial gain. Moreover, “interest of a representative of the news media in using the information for news dissemination purposes will not be considered a commercial interest.” 45 C.F.R. § 5.45(c)(1).

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<sup>7</sup> The ACLU and WRC are also “representative[s] of the news media” within the meaning of the statute and applicable regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (defining a representative of the news media as an entity that “gathers information of potential interest to a segment of the public” and “uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience”); *see also Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1397 (D.C. Cir. 1989) (same); 45 C.F.R. § 5.5 (defining representative of the news media as “a person actively gathering information for an entity organized and operated to publish or broadcast news to the public”).

As explained above, this request falls within § 5.45(c)(1) because it supports both Requestors' dissemination of information relating to a topic of current interest to the public. In this respect, the request strongly resembles the many previous instances in which the government waived all fees associated with responding to FOIA requests by the ACLU.<sup>8</sup>

In any event, the Requestors are "representative[s] of the news media" and do not seek the records requested for commercial use. Accordingly, even if any fees could be charged relating to the processing of the request, they would be "limited to reasonable standard charges for document duplication" alone. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

\* \* \*

We certify that the information in this request is true to the best of our knowledge and belief.

If this request is denied in whole or in part, the ACLU asks that the government justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect the government to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding our request for expedited processing, we alternatively look forward to your reply to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

Please direct any correspondence and provide any records to Omar C. Jadwat, either by email to [ojadwat@aclu.org](mailto:ojadwat@aclu.org), 212-549-2500, or at the address below. Thank you for your prompt attention to this request.

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<sup>8</sup> The following are recent examples of requests in which agencies did not charge the ACLU fees associated with responding to its FOIA requests: (1) a FOIA request submitted to the Department of State in April 2005; (2) a FOIA request submitted to the National Institute of Standards and Technology in April 2005; (3) a FOIA request submitted to the Office of Science and Technology in the Executive Office of the President in August 2003; (4) a FOIA request submitted to the Federal Bureau of Investigation in August 2002; (5) a FOIA request submitted to the Office of Intelligence Policy and Review in August 2002; (6) a FOIA request submitted to the Office of Information and Privacy in the Department of Justice in August 2002.

Sincerely,

/s/ Omar C. Jadwat  
ACLU Immigrants' Rights Project  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

/s/ Jennifer Podkul  
Migrant Rights and Justice Program  
1012 14th St. NW, Suite 1100  
Washington, D.C. 20005

EXHIBIT A  
*List of A-Numbers*

A 202-000-415  
A 202-001-394  
A 202-030-878  
A 202-030-948  
A 205-517-292  
A 205-517-378  
A 205-517-463  
A 205-641-950  
A 205-642-071  
A 205-645-799  
A 205-726-738  
A 205-732-315  
A 205-841-497  
A 205-841-567  
A 205-841-676  
A 206-159-844  
A 206-316-246  
A 206-360-464  
A 206-693-644  
A 206-726-950  
A 206-727-574  
A 206-756-278  
A 206-756-450  
A 206-756-451  
A 206-769-689  
A 206-769-691  
A 206-769-974  
A 206-770-122  
A 206-770-123  
A 206-770-294  
A 206-770-294  
A 206-770-296  
A 206-771-905  
A 206-772-155  
A 206-772-617  
A 206-772-617  
A 206-775-149  
A 206-779-155  
A 206-779-401  
A 206-779-995  
A 206-780-173  
A 206-794-795

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A 206-795-501  
A 206-795-502  
A 206-796-342  
A 206-796-454  
A 206-797-056  
A 206-797-057  
A 206-798-972  
A 206-799-663  
A 206-799-990  
A 206-800-296  
A 206-800-448  
A 206-800-630  
A 206-802-293  
A 206-802-293  
A 206-802-407  
A 206-802-509  
A 206-802-815  
A 206-803-003  
A 206-804-727  
A 206-805-186  
A 206-805-197  
A 206-805-198  
A 206-805-200  
A 206-807-259  
A 206-807-529  
A 206-807-546  
A 206-807-554  
A 206-807-622  
A 206-807-687  
A 206-807-744  
A 206-807-771  
A 206-807-773  
A 206-843-157  
A 206-843-682  
A 206-843-682  
A 206-846-866  
A 206-870-519

# **EXHIBIT H**

LEGAL DEPARTMENT  
IMMIGRANTS'  
RIGHTS PROJECT



September 10, 2015

VIA ELECTRONIC MAIL

U.S. Citizenship and Immigration Services  
National Records Center, FOIA/PA Office  
150 Space Center Loop, Suite 300  
Lee's Summit, MO 64064-2139

uscis.foia@uscis.dhs.gov

Re: Freedom of Information Act (FOIA) Request  
Juvenile Referral Program

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
IMMIGRANTS'  
RIGHTS PROJECT

PLEASE RESPOND TO:  
CALIFORNIA OFFICE  
39 DRUMM STREET  
SAN FRANCISCO, CA 94111-4805  
T/415.343.0770  
F/415.395.0950

125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2660  
F/212.549.2654  
[WWW.ACLU.ORG](http://WWW.ACLU.ORG)

OFFICERS AND DIRECTORS  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

ROBERT REMAR  
TREASURER

Dear FOIA Officer,

The American Civil Liberties Union Foundation ("ACLU") and the Women's Refugee Commission ("WRC") ("Requestors") submit this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq. We ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E), and that we be granted a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

Request for Information

The Requestors request disclosure of the following records that were prepared, received, transmitted, collected and/or maintained by the U.S. Citizenship and Immigration Services ("CIS"), including but not limited to records prepared, received, transmitted, collected and/or maintained at CIS Headquarters:

All records relating to the Juvenile Referral Program ("JRP").

By "Juvenile Referral Program" we mean:

- Any program or policy referred to by the Office of Refugee Resettlement ("ORR") or the U.S. Customs and Border Protection ("CBP") or any of its components as the "Juvenile Referral Program," the "Juvenile Referral Process," or the "Mexican Juvenile Referral Program";
- Any program or policy first implemented in 2014 relating to children suspected of being "foot guides," "river guides," "smuggling guides," or "circuit children" or otherwise suspected of being involved in assisting others to cross the U.S.-Mexico border; and
- Any program or policy involving the referral or potential referral of

children for prosecution by federal, state, or local authorities.

This request includes, but is not limited to:

- All policies, regulations, practices, procedures, recommendations and guidelines implementing or referring to the JRP;
- All communications discussing the JRP as a whole or in part or individual cases or incidents within the JRP; and
- All case files, forms (including Forms 93, Forms I-213, and Forms I-770), or other records in CIS's possession that relate to children that are included within the JRP or have been considered for inclusion within the JRP. Our understanding is that this category of records will include case files relating to most or all of the A-numbers listed in Exhibit A, as well as additional case files. (We do not seek these children's names or other personally identifying information, and you may redact such information from the records provided to us.)

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#### Request for Expedited Processing

An expedited processing request "may be made at the time of the initial request for records or at any later time." 6 C.F.R. § 5.5(d)(2). A "requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing." 6 C.F.R. § 5.5(d)(3). In compliance with these procedural requirements, the Requestors submit this expedited processing request at the time of our initial records request and certify that the information in this request is true to the best of our knowledge and belief. See *supra* p. 5.

Expedited processing is warranted because there is "an urgency to inform the public about an actual or alleged federal government activity" and the request is made by entities "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II); see also 6 C.F.R. § 5.5(d)(ii). The request relates not to "government activity generally," cf. 6 C.F.R. § 5.5(d)(3), but to a possible large scale violation of children's due process rights.

First-hand reports from children, their attorneys, along with statements of federal officials, suggest that under the JRP, the federal government is systematically subjecting hundreds of children to confinement for months at a time to punish them for suspected criminal activity, without trial. Reports further suggest that the government interrogates these children about suspected criminal activity without providing them with counsel and without



protective measures commensurate with their vulnerable status. There is an “urgency to inform the public about [this] actual or alleged governmental activity” because (1) exposure of this practice to public scrutiny could cause it to stop, sparing children from additional confinement and interrogation; and (2) the government should not be able to shield an ongoing violation of children’s fundamental due process rights from public view.

Furthermore, there is intense public interest in issues relating to unaccompanied children and trafficking. A search for articles published in the last year that referred to unaccompanied children and the border in Westlaw’s news database resulted in over 5,000 hits. A search for articles published in the last year that referred to unaccompanied children and trafficking or smuggling resulted in over 3,700 hits.

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UNION FOUNDATION

Despite this widespread interest, little or no information about the JRP is available in the public domain. Searches of CBP’s website have revealed only a one-sentence reference to the JRP in CBP’s Performance and Accountability Report Fiscal Year 2014. A broader internet search yields only short media articles, one blog, and one organization report referencing the JRP. This informational void on a topic of intense public interest further demonstrates the urgency of this request.

The Requestors are “primarily engaged in disseminating information” and thus warrant expedited processing. 5 U.S.C. § 552(a)(6)(E)(v)(II); see also 6 C.F.R. § 5.5(d)(3). Further, the Department of Homeland Security’s (“DHS”) regulations specifically provide that “information dissemination . . . need not be [a requestor’s] sole occupation,” and it is our view that the Requestors meet the standard for expedited processing. 6 C.F.R. § 5.5(d)(3). The WRC is an expert resource and advocacy organization that monitors the care and protection of refugee women and children. It disseminates information about these issues to governments, policy makers, and the general public. The WRC’s Migrant Rights and Justice Program conducts extensive research and regularly publishes reports on detained immigrant children in U.S. federal custody, including the seminal publications *Halfway Home* and *Forced from Home*. The WRC publishes a newsletter distributed via email, maintains a blog, releases information via social media platforms, and regularly shares its findings through print and televised media platforms, as well as its website, [www.womensrefugeecommission.org](http://www.womensrefugeecommission.org). The WRC often conducts original research and places facts in a legal and policy context like media organizations, which the regulations regard as automatically meeting the “information dissemination” requirement. See 6 C.F.R. § 5.5(d)(3) (“a full-time member of the news media” need not “establish that he or she is a person whose main professional activity or occupation is information dissemination.”).

For its part, the ACLU publishes newsletters, provides news briefings, and publishes and disseminates reports on civil liberties issues, right-to-know documents, and other materials to the public through its communications department, its 53 state-based affiliates, and its public website, [www.aclu.org](http://www.aclu.org). Among other civil liberties and civil rights issues, the ACLU's website addresses immigrants' rights issues in depth (at [www.aclu.org/immigrants](http://www.aclu.org/immigrants)), provides features on immigrants' rights issues in the news, and contains hundreds of primary source documents created or obtained by ACLU staff. The website, which received over 13.9 million visits in 2013, specifically features information obtained through FOIA requests. The ACLU also publishes an electronic newsletter distributed via email; airs regular podcasts; maintains a blog, releases information via social media platforms; and has produced a television series on civil liberties issues.

Upon receipt of the records requested, the Requestors will review them carefully and will disseminate newsworthy information through the channels available to them.

#### Request for Waiver of Fees

The requestors ask that all fees associated with this FOIA request be waived. We are entitled to a waiver of all costs because disclosure of the information is "...likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). See also 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, the Requestors have the ability to widely disseminate the requested information. See *Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003).

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities. The records requested relate directly to governmental operations or activities; all are directly traceable to a specific federal government program, the JRP. Release of these records will contribute significantly to public understanding of the JRP, and more broadly to the processing of unaccompanied children at the border and governmental treatment of children suspected of being involved in smuggling activity. As noted above, although these are areas of intense public concern, there is virtually no information about the JRP available to the public. Thus, the requested information would significantly enhance the public's understanding of the JRP and the broader topics it relates to.

Disclosure is not within the commercial interest of the Requestors. The ACLU and WRC are not-for-profit organizations that do not seek to disseminate the information for the purpose of commercial gain. Moreover, “a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.” 6 C.F.R. § 5.11(b)(6). As explained above, this request falls within § 5.11(b)(6) because it supports both Requestors’ dissemination of information relating to a topic of current interest to the public. In this respect, the request strongly resembles the many previous instances in which the government waived all fees associated with responding to FOIA requests by the ACLU.

In any event, the Requestors are “representative[s] of the news media” and do not seek the records requested for commercial use. Accordingly, even if any fees could be charged relating to the processing of the request, they would be “limited to reasonable standard charges for document duplication” alone. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

\* \* \*

We certify that the information in this request is true to the best of our knowledge and belief.

If this request is denied in whole or in part, the ACLU asks that the government justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect the government to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding our request for expedited processing, we alternatively look forward to your reply to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

Please direct any correspondence and provide any records to Omar C. Jadwat, either by email to [ojadwat@aclu.org](mailto:ojadwat@aclu.org) or at the address below. Thank you for your prompt attention to this request.

Sincerely,

/s/ Omar C. Jadwat  
ACLU Immigrants’ Rights Project

125 Broad Street, 18th Floor  
New York, NY 10004

/s/ Jennifer Podkul  
Migrant Rights and Justice Program  
Women's Refugee Commission  
1012 14th St. NW, Suite 1100  
Washington, D.C. 20005

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

EXHIBIT A  
List of A-Numbers

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

A 202-000-415  
A 202-001-394  
A 202-030-878  
A 202-030-948  
A 205-517-292  
A 205-517-378  
A 205-517-463  
A 205-641-950  
A 205-642-071  
A 205-645-799  
A 205-726-738  
A 205-732-315  
A 205-841-497  
A 205-841-567  
A 205-841-676  
A 206-159-844  
A 206-316-246  
A 206-360-464  
A 206-693-644  
A 206-726-950  
A 206-727-574  
A 206-756-278  
A 206-756-450  
A 206-756-451  
A 206-769-689  
A 206-769-691  
A 206-769-974  
A 206-770-122  
A 206-770-123  
A 206-770-294  
A 206-770-294  
A 206-770-296  
A 206-771-905  
A 206-772-155  
A 206-772-617  
A 206-772-617  
A 206-775-149  
A 206-779-155  
A 206-779-401  
A 206-779-995

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

A 206-780-173  
A 206-794-795  
A 206-795-501  
A 206-795-502  
A 206-796-342  
A 206-796-454  
A 206-797-056  
A 206-797-057  
A 206-798-972  
A 206-799-663  
A 206-799-990  
A 206-800-296  
A 206-800-448  
A 206-800-630  
A 206-802-293  
A 206-802-293  
A 206-802-407  
A 206-802-509  
A 206-802-815  
A 206-803-003  
A 206-804-727  
A 206-805-186  
A 206-805-197  
A 206-805-198  
A 206-805-200  
A 206-807-259  
A 206-807-529  
A 206-807-546  
A 206-807-554  
A 206-807-622  
A 206-807-687  
A 206-807-744  
A 206-807-771  
A 206-807-773  
A 206-843-157  
A 206-843-682  
A 206-843-682  
A 206-846-866  
A 206-870-519



# JUVENILE REFERRAL PROCESS



U.S. Customs and  
Border Protection

# BACKGROUND

- **Tactics, Techniques, and Procedures (TTP) utilized by Transnational Criminal Organizations (TCO's).**
  - (b) (7)(E)
  - Narcotics and aliens
  - (b) (7)(E)
  - Juvenile guides (b) (7)(E)
  - Male and female
  
- **Juvenile Referral Process (JRP)**
  - Homeland Security Act of 2002, Section 462, transferred responsibilities for the care and placement of unaccompanied alien children (UAC) to the Director of the Office of Refugee Resettlement (ORR).
  - Trafficking Victims Protection Act of 2000.
  - William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005 and 2008.
  - Reno VS Flores - Requires DHS to hold juveniles in the least restrictive setting appropriate to their age and special needs to ensure their protection and wellbeing.





## DESIRED OUTCOME

- The JRP is an organization of existing legal and administrative processes, used to standardize the treatment of at-risk juvenile offenders, and thereby increase the chances of rehabilitating and protecting juvenile offenders by temporarily removing them from their criminal environment.
  - Consistent with the TVPRA in cases where juveniles may be exploited by TCOs.
  - Opportunities for U.S. and GOM representatives to interview and/or assess for possible involvement in human trafficking.
  - Review of case by immigration judge and determination of possible asylum or other forms of immigration relief.
- **Prevention and Intervention**
  - Rescue and safeguard children from TCO's.
  - Removal of juvenile smuggler disrupts their opportunity to engage in illicit activity and decrease reckless criminal behavior.
  - This process further enables CBP to protect the welfare of the juvenile, removing them from a dangerous and criminal atmosphere by placing them into a secure environment, conducive to positive growth.
  - Referral of juvenile offenders to ORR (b) (7)(E)
  - Degrade TCO's ability to exploit juveniles and impact a systemic trend affecting all levels of smuggling operations.



# CURRENT SITUATION

- **Initial information indicates positive results from the process. The following data (current as of February 13, 2015) has been provided by CBP:**
- Total Referrals: 503
- Accepted for criminal prosecution: 0
- UACs repatriated after referral to an Immigration Judge: 214
- UACs referred, pending disposition: 173
- UACs re-apprehended after referral (recidivist): 19
- Average time in the United States, including placement with HHS/ORR: 84 days
  - (Average excludes instances of aging out and/or correction due to redetermination of age)



## PROCESS

(b) (7)(E)



# JRP Referral Factors

Juvenile coordinators use a combination of factors to determine if the juvenile meets the criteria to be referred through the Juvenile Referral Process on a case by case basis. Juvenile coordinators will make a determination and prioritize referrals based on operational capacity (b) (7)(E) (b) (7)(E) in combination with the below factors\* to make their determination. (b) (7)(E)

- Juvenile Information

(b) (7)(E)

- Type of Smuggling event

(b) (7)(E)

- Verification of criminal activity (smuggling/guiding)

(b) (7)(E)

- Smuggling Details

(b) (7)(E)



## SIGNIFICANT ARRESTS

- **Laredo**

- Juvenile (16) arrested by DPS Trooper and later admitted to being the guide. **He admitted to guiding a group getting paid \$200 per person.** He admitted he left a man behind in the brush that was dying. (b) (7)(E) found the deceased man along the road.
- USC Juvenile (17) (b) (7)(E) operating for the (b) (7)(E) for over 8 yrs. Has assaulted agents and has now moved up in rank within the (b) (7)(E) is working on prosecuting him under juvenile delinquency.

- **Rio Grande Valley**

- Self-admitted brush guide (17) operating for a smuggler known as (b) (6), (b) (7)(C), (b) (7)(E) (b) (6), (b) (7)(C), (b) (7)(E) is identified as a (b) (7)(E) **Voluntarily Returned 64 times prior to JRP.**
- Juvenile brush guide (15) operating for a smuggler known as (b) (6), (b) (7)(C), (b) (7)(E) is (b) (7)(E) **Voluntarily Returned 54 times prior to JRP.**

- **Del Rio**

- Juvenile guide (16) was referred to ORR and removed to Guadalajara, MX at Mexican Consulate's expense and escorted to state/country of residence. (83 days total for this case). Juvenile was **Voluntarily Returned 11 times prior to JRP.**
- USC Juvenile (17) apprehended while smuggling 240 lbs. of marijuana. He was TOT the State and charged. A week later, while out on bond awaiting court, he was apprehended smuggling aliens in a vehicle. **Bond was revoked.**



# PATH FORWARD

- **Bi-national prevention and intervention working together with the Government of Mexico (GoM).**
  - Explore ways to work towards intervention (before) and rehabilitation (after) repatriation
  - BVP-TWG work with preventative engagement
    - Operation Detour
    - Citizen academies
- **Continue to evaluate alternative actions/sanctions in addressing organized smuggling by juveniles along the border.**
- **Continue to identify best practices and assess successful practices.**



# QUESTIONS?



U.S. Customs and  
Border Protection



# BORDER PATROL SECTOR JUVENILE REFERRAL PROGRAM



U.S. Customs and  
Border Protection



# BACKGROUND

- **Tactics, Techniques, and Procedures (TTP) utilized by Transnational Criminal Organizations (TCO's).**
  - (b) (7)(E)
  - Narcotics and aliens
  - Walk south bound through POE
  - (b) (7)(E)
  - Male and female
- **Juvenile Referral Program (JRP)**
  - Homeland Security Act of 2002, Section 462, transferred responsibilities for the care and placement of unaccompanied alien children (UAC) to the Director of the Office of Refugee Resettlement (ORR).
  - Trafficking Victims Protection Act of 2000.
  - William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005 and 2008.



# DESIRED OUTCOME

- **Prevention and Intervention**

- Rescue and safeguard children from TCO's.
- Referral of juvenile offenders to ORR (b) (7)(E)
- Degrade TCO's ability to exploit juveniles and impact a systemic trend affecting all levels of smuggling operations.
- Removal of juvenile smuggler will keep them from engaging in illicit activity and decrease reckless criminal behavior.
- This process further enables CBP to protect the welfare of the juvenile, removing them from a dangerous and criminal atmosphere by placing them into a secure environment, conducive to positive growth.

- **The JRP is utilized as an alternative to increase the chances of rehabilitating juvenile offenders by temporarily removing them from their criminal environment.**

- **Diversion Program**

- JRP used as a diversion program



## CURRENT SITUATION

- **JRP Implemented in May 2014**
- **Perception of being prosecuted and going to jail.**

- (b) (7)(E)

- (b) (7)(E)

- (b) (7)(E)



## SIGNIFICANT ARRESTS

- Juvenile (16) arrested by DPS Trooper and later admitted to being the guide. **He admitted to guiding a group getting paid \$200 per person.** He admitted he left a man behind in the brush that was dying. **(b) (7)(E)** found the deceased man along the road.
- USC Juvenile (17), operating for over 8 yrs. Has assaulted agents and has now moved up in rank within the **(b) (7)(E)** is working on prosecuting him under juvenile delinquency.
- Self-admitted brush guide (17) operating for a smuggling organization, **Voluntarily Returned 64 times prior to JRP.**
- Juvenile brush guide (15) operating for a smuggling organization. **Voluntarily Returned 54 times prior to JRP.**
- Juvenile guide (16) was referred to ORR and removed to Guadalajara, MX at Mexican Consulate's expense and escorted to state/country of residence. (83 days total for this case). Juvenile was **Voluntarily Returned 11 times prior to JRP.**
- USC Juvenile (17) apprehended while smuggling 240 lbs. of marijuana. He was TOT the State and charged. A week later, while out on bond awaiting court, he was apprehended smuggling aliens in a vehicle. **Bond was revoked.**



## PATH FORWARD

- **Bi-national prevention and intervention working together with the Government of Mexico (GoM).**
  - Continue intervention after repatriation
  - D.A.R.E.
  - Operation Detour
- **Continue to evaluate alternative sanctions in addressing organized smuggling by juveniles along the border.**
- **Continue to identify best practices**
  - 90 day assessment(s)

